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ABSTRACT

This report on the efforts of the Department of Health, Education, and Welfare (HEW) to comply to Title VI of the 1964 Civil Rights Act is based primarily on Commission staff work undertaken during the Spring and Summer of 1968. Interviews were conducted with staff members in HEW's Office for Civil Rights in Washington, and in the Atlanta and Charlottesville Regional Offices; and guidelines, reports, memoranda, letters, and other written materials were analyzed in an effort to develop a comprehensive picture of the HEW Title VI compliance program. Of the more than 30 departments and agencies involved only a handful--and especially HEW--have sizable Title VI responsibilities as measured by the specific relationship of their programs to minority group members, and the amount of Federal financial assistance available for these programs. In common with these other Federal agencies, the Title VI program at HEW has been in flux for the past five years. There have been a number of changes in organization, in structure, in lines of authority, and in personnel within the Title VI program. In addition, the number and dollar volume of Title VI programs have grown significantly since 1964, thereby compounding the task of Title VI enforcement, but, at the same time, providing additional scope and leverage for achieving its objectives. (Author/JM)

U.S. COMMISSION ON CIVIL RIGHTS

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- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;
- Appraise Federal laws and policies with respect to equal protection of the laws;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws; and
- Submit reports, findings, and recommendations to the President and the Congress.

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HEW AND TITLE VI

A Report on the Development of the Organization, Policies, and Compliance Procedures of the Department of Health, Education, and Welfare Under Title VI of the Civil Rights Act of 1964

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PREFACE

Title VI of the Civil Rights Act of 1964, with its pledge of equal access to the benefits of federally assisted programs, was passed more than 5 years ago. At the time it was enacted, the necessity for this law was clear. Documented data by this Commission and other agencies, both government and nongovernment, had shown that discrimination was rampant in the operation of federally assisted programs. It was a major cause of continued denial of equal opportunity to minority group members. The enactment of Title VI was an historic event, important not only as specific legislation to end such discrimination, but also as a symbol of the Nation's will to redeem its mandate to provide equality to all its citizens.

The rich promise of Title VI has not been realized. The Commission has found that discrimination persists in the operation of a number of Federal programs and that the benefits of these programs still do not reach all Americans on an equitable basis. The Commission also has found that the performance of Federal departments and agencies in carrying out their Title VI responsibilities has been uneven and that their efforts have rarely been proportionate to the responsibilities explicitly defined by the act.

A major reason for this lack of progress is found in the inadequacies of the mechanisms which departments and agencies have established to assure that there will be effective compliance. For many agencies, the concept of civil rights has created a new area of responsibility and, despite long experience in devising efficient machinery to administer traditional programs, they have found it difficult to develop effective means of carrying out their civil rights responsibilities.

The Commission already has undertaken surveys of the Title VI procedures of a number of Federal departments and agencies. It has completed reports based on surveys of the Civil Aeronautics Board and of two major departments—the Department of the Interior and the Department of Agriculture—pointing out flaws in their existing operations and suggesting ways in which their civil rights structure and organizations could be improved. The present survey of the mechanisms developed by the Department of Health, Education, and Welfare (HEW) in carrying out its Title VI responsibilities is another in this series.

The Commission considers this survey to be of special importance. HEW, by virtue of the nature and scope of its programs, is the most important Federal department or agency to be affected by Title VI. To a large extent, the success or failure of that law is measured by the success or failure of HEW's effort. Therefore, it is essential that this department maintain policies, practices, and techniques which will assure achievement of the letter and spirit of Title VI.

This report is based primarily on Commission staff work undertaken during the spring and summer of 1968. Interviews were conducted with staff members in HEW's Office for Civil Rights in Washington, and in the Atlanta and Charlottesville Regional Offices, and guidelines, reports, memoranda, letters, and other written materials were analyzed in an effort to develop a comprehensive picture of the HEW Title VI compliance program.

This survey does not purport to be an exhaustive appraisal of HEW's entire equal opportunity program. For example, it does not deal with HEW's efforts to assure equal employment opportunity within its own Department or in employment pursuant to contracts in which the Department is involved. Further, in the area of Title VI enforcement attention has not been focused on the northern school program which was just getting underway at the time the Commission field work was conducted. Finally, the report is not concerned with specific instances of discrimination in the operation of HEW programs. Other Commission investigations and reports, such as its 1965 publication, *Title VI . . . One Year After*, have documented continued problems of discrimination in these programs. The present report is concerned with the adequacy of the enforcement machinery that HEW has devised to meet these problems.

In scope, the study covers a time span of approximately 4½ years, from the enactment of Title VI in July 1964 through January 1969, when a new Administration took office. An attempt has been made to trace the development of the HEW compliance effort over a period of years in the belief that historical perspective can furnish a more insightful picture of current operations and trends. From this, it is hoped that a more complete understanding of the dynamics of the present program will emerge.

This report, unlike other Commission reports, deals largely with the past. It does not assess facts as they are now, but as they developed over a period of critical years when a major Federal department was struggling to devise methods of operation to carry out responsibilities in an area with which it pre-

viously had not been primarily concerned. Thus the report deals mainly with history. The Commission believes that it is important history. It also believes that other departments and agencies not as advanced as HEW in their Title VI enforcement efforts can profit from this account of the HEW experience; that the report can assist them in learning the lessons that HEW could learn only through the difficult process of trial and error; and that it can help them accelerate the development of their own enforcement machinery. Finally, the Commission hopes that the report, by identifying the strengths and weaknesses in the earlier HEW Title VI efforts can be helpful to the new Administration as it seeks to make the Civil Rights Act of 1964 an integral part of the fabric of American life.

The Commission acknowledges the special services of Robert H. Cohen, Supervisory General Attorney, Office of Program and Policy, in the preparation of this report.

CHAPTER I

INTRODUCTION

On July 2, 1964, the most comprehensive civil rights legislation since the days of Reconstruction was signed into law. The 11 titles of the Civil Rights Act of 1964 cover a wide variety of basic legal rights such as the right to vote the right to equal access to places of public accommodation, and the right to equal employment opportunity. One of the shortest titles of the act also is one of the most significant. Title VI, concerned with "Nondiscrimination in federally assisted programs," provides, in part, as follows:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Title VI applies to every Federal loan or grant program and every Federal department or agency administering these programs has the responsibility of assuring compliance with the provisions of this title. Of the more than 30 departments and agencies involved, however, only a handful have sizable Title VI responsibilities as measured by the specific relationship of their programs to minority group members and the amount of Federal financial assistance availabe for these programs. Of this handful, by far the most important is the Department of Health, Education, and Welfare (HEW).

The programs administered by HEW tangibly affect the lives of millions of Americans and hold special meaning for disadvantaged Americans, a disproportionate number of whom are minority group members. For example, HEW programs of assistance to education under the Elementary and Secondary Education Act represent a principal instrumentality by which disadvantaged children are enabled to gain the knowledge and skills that are prerequisites for productive participation in

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society. Various welfare programs funded by HEW are of vital importance to children, the aged, the handicapped, and other needy persons. And various health programs administered by the Department, such as Medicare and Medicaid, provide needed medical assistance to the millions of American citizens who otherwise would be forced to do without.

Further, in terms of the sheer dollar amount of financial assistance provided under Federal loan and grant programs, HEW is the major agency affected by Title VI. Of the six largest Federal grant programs covered by Title VI, three—public assistance, aid to education, and public health research and services—are administered entirely or in large measure by HEW.[1]

In Fiscal Year (FY) 1968, payments for public assistance programs—Aid to Families with Dependent Children (AFDC), Old Age Assistance (OAA), Aid to the Blind (AB), and Aid to the Permanently and Totally Disabled (APTD)—accounted for nearly $5.4 billion in Federal money. The largest of these programs is AFDC. The funds for public assistance programs, as for most programs of HEW and other agencies, do not flow directly to the beneficiaries, but go to them through intermediate agencies, called recipients. The recipients of Federal aid for public assistance are State agencies [usually the State Department of Public Welfare] which are responsible for administering plans for aid and services which must be in effect throughout the State. By law a single State agency administers this statewide program and is responsible for insuring that all political subdivisions in the State adhere to the requirements of Title VI. This has particular significance for purposes of Title VI enforcement since, unlike the education and health programs discussed below, the recipient is not the local school district or the individual hospital, nursing home, or clinic, but is the State itself. Violations of the requirements of Title VI are the responsibility of the State and fund cutoffs must be applied to the entire State, not to the offending individual subdivision.

Education, the third largest area of Federal aid, also is administered by HEW and accounted for more than $4 billion in FY 1968. Each of the 20,000 school districts within the United States is an actual or potential recipient of a portion of this money. Nearly $1.5 billion in FY 1968 helped support activities under the Elementary and Secondary Education Act. Most of the money provided under Title I of the act supported educa-

[1] Congressional Quarterly, Aug. 15, 1969, at 1496.

tional programs in areas having a high concentration of low-income families. Lesser amounts helped provide school library resources, textbooks and other instructional materials, and supplementary educational centers and services. Other major programs of Federal aid to education include the maintenance and operation of schools in federally impacted areas, research grants and fellowship awards (through the National Science Foundation), manpower development and training activities, cooperative vocational education, and higher educational facilities.[2]

Recipients of this aid include State educational agencies, local school districts, and local educational agencies. Title I assistance, for example, flows to State education agencies and, in turn, is distributed by them to local school districts. Aid to impacted areas, on the other hand, is furnished directly to school districts which are affected by Federal activity in their locality.

The sixth largest area of federally assisted programs, with a total Federal outlay of nearly $1.7 billion in FY 1968, was public health and research services administered by HEW. Most of the nearly 9,000 hospitals in the United States are recipients of Federal financial assistance. In addition, thousands of health clinics, nursing homes, and similar facilities receive Federal monies. Major expenditures in FY 1968 included $351 million for construction of hospitals and health research facilities under the Hill-Burton Program, more than $100 million for general medical services, and more than $730 million for research projects and grants.

Federal financial assistance for medical and health services and research goes to a variety of recipients, ranging from small private nursing homes and hospitals to State health departments. Whether they are public or private, and regardless of size, all are covered by Title VI and can be held accountable for nondiscrimination in the use of Federal money.[3]

Throughout the history of Title VI, the pivotal role of HEW

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[2] American Education Annual Guide to Office of Education Programs, *Where the Money Is* (U.S. Government Printing Office, 1968).

[3] It is important to note that many of the recipients of public health research grants are institutions of higher education. As such, they also are covered by Title VI by virtue of a variety of other Federal programs, most notably the Higher Education Facilities Act and the National Defense Education Act. For purposes of Title VI compliance, they have always been viewed as educational institutions regardless of the amount of Federal aid which they may receive for health research. Other Title VI programs administered by HEW include vocational rehabilitation (nearly $300 million in Fiscal Year 1968) and child care assistance (including maternal and child health and welfare services), child health and human development activities, and juvenile delinquency and youth development program ($263 million). For purposes of Title VI compliance, these programs increasingly have come under the broad heading of "welfare" and currently are included together with public assistance as part of the State agency review program which is discussed later.

has been recognized. During the debates which preceded enactment of the Civil Rights Act of 1964, the discussions concerning Title VI dealt chiefly with HEW and its programs. The regulations to effectuate Title VI issued by all Federal departments and agencies were modeled after those of HEW. In fact, HEW has been the main focus of the Federal effort under Title VI and, to a large extent, the success or failure of that effort has been measured by the success or failure of the effort of HEW.

CHAPTER II

OVERVIEW

In common with other Federal agencies with civil rights responsibilities, the Title VI program at HEW has been in flux for the past 5 years. There have been a number of changes in organization, in structure, in lines of authority, and in personnel within the Title VI program, paralleling similar changes within the Department as a whole. In addition, the number and dollar volume of Title VI programs have grown significantly since 1964, thereby compounding the task of Title VI enforcement but, at the same time, providing additional scope and leverage for achieving its objectives.

Despite the amount of change, four fairly distinct phases of activity can be identified. The first period began before passage of the 1964 Act and continued roughly to the end of 1965. Enforcement efforts were carried on by the operating agencies [4] under the leadership of James M. Quigley, then Assistant Secretary.[5] The second phase, covering a time span of about 18 months, dates from December of 1965, when an Office for Civil Rights (OCR) was established under the direction of F. Peter Libassi, who was designated as Special Assistant to the Secretary for Civil Rights. The third phase began in mid-1967 when civil rights functions which had been borne by the operating agencies were reorganized [6] and brought under the OCR. This period, characterized by decentralization of enforcement operations to OCR

[4] These are the agencies responsible for administering HEW's substantive programs. As used throughout this report the term refers to the Public Health Service, the Office of Education, the Social Security Administration, the Welfare Administration, and the Vocational Rehabilitation Administration. On August 15, 1967, pursuant to a departmental reorganization, the Welfare Administration and the Vocational Rehabilitation Administration were brought within the newly created Social and Rehabilitation Service.

[5] Quigley was assigned responsibility for coordinating and supervising HEW's Title VI efforts by Secretary Anthony J. Celebrezze in 1964 and continued in this capacity until the Office for Civil Rights was established.

[6] Although the reorganization was a continuous process, which started in the early summer of 1967 and ran through the end of the year, the formal, effective date was Nov. 19, 1967.

staff in the Regional Office, ended with the departure of Secretary John W. Gardner and the resignation of Libassi shortly thereafter. The fourth phase dates from the assumption of leadership of OCR by Ruby G. Martin in the spring of 1968 and ends with her resignation early in 1969.

PHASE I

In the spring of 1964, HEW began to "tool up" in anticipation of passage of the Civil Rights Act. Agency task forces were assembled, proposed regulatory language was discussed, and attempts were made to catalog programs of Federal financial assistance. By midsummer and early fall consideration was being given to possible methods of enforcement, such as assurances and statements of compliance, and informal legal opinions were being prepared as problems of interpretation, scope, and authority, emerged.[7] These task forces generally were composed of HEW staff members who had either volunteered for the assignment or had expressed interest in working with the new legislation. A number of the staff members active on these early task forces have continued in influential roles within HEW's subsequent civil rights operation.[8]

By the time the Civil Rights Act of 1964 was passed, HEW had developed considerable momentum for carrying forward the mandate of Title VI. The Office of General Counsel, under the direction of Reginald Conley, then Assistant General Counsel for Legislation, bore the major departmental responsibility during this initial phase. At the same time, an interagency committee, which included representatives of the White House, the U.S. Commission on Civil Rights, the Department of Justice, and the Bureau of the Budget, was convened for the purpose of drawing up a consistent, uniform set of Title VI regulations.[9] The initial set of regulations was drafted for HEW and then

[7] The number and variety of memoranda of law grew considerably during the year or two following passage of Title VI. An effort was made within HEW to develop an index-digest of these opinions for use within the Department and for their possible use by other agencies with similar Title VI problems. Despite a fair amount of work, the digest never was issued. The main reason given by HEW's Office of General Counsel was that legal opinions developed in HEW were applicable only to HEW administered programs and would be of little use, if not actually misleading, to other Federal agencies which might try to apply them in interpreting their own Title VI responsibilities. Subsequently, the Department of Justice, in exercising its responsibility for coordinating Title VI efforts, revived the idea of developing a central file of legal opinions dealing with Title VI. Despite wide concurrence on the part of representatives of a number of Title VI agencies and of this Commission that such a file could be extremely helpful, a central file never has been created.

[8] E.g., Louis Rives, formerly with the Vocational Rehabilitation Administration, is currently Director of the Operations Division; Edwin Yourman, formerly Assistant General Counsel for Welfare and Education, is currently Assistant General Counsel for Civil Rights.

[9] Congressional Quarterly, week ending Apr. 9, 1965 at 621.

used as the standard for regulations of the other Title VI agencies. In the fall of 1964, Assurance Forms (441's) [10] and Statements of Compliance [11] were developed within HEW. The former were to be submitted by all recipients of Federal financial assistance; the latter, by State agencies administering continuing programs. With the distribution of the 441's and Statements of Compliance, the phase of "paper compliance" [12] was launched. Some onsite reviews [13] were conducted, primarily in response to complaints of discrimination against hospitals and other health facilities. There were relatively few reviews of schools, rehabilitation centers, and other facilities and services of HEW recipients. During this initial stage of compliance activity, staff members encountered varying degrees of resistance from program administrators and regional people within their own agency who often were identified closely with State and local officials. The latter urged a "go slow" attitude and complained that more time was needed to prepare their own staff members, boards, and local communities regarding the requirements of Title VI and the expectations of HEW officials.

Finally, this first phase was characterized by uncertainty on the part of HEW staff, recipients, and the general public regarding the commitment of the Administration, the expectations of agency administrators, and the standards by which compliance would be determined. Although many of these uncertainties abated by the second or third year after the compliance program began, vestiges of confusion have persisted.

PHASE II

In December 1965, 1 year after the regulations had been issued, Secretary Gardner established within the Office of the Secretary a Civil Rights Office, hereafter referred to as the Office for Civil Rights (OCR). F. Peter Libassi, then Deputy Staff Director of

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[10] HEW Form 441–A (1/65).

[11] See for example, Form CB–FS 5022, Department of HEW, Welfare Administration, Bureau of Family Service, Children's Bureau (1/65). Budget Bureau No. 122–R097. Similar documents were utilized with State vocational rehabilitation departments and with State health agencies.

[12] This is a term which has come to be used contemptuously in reference to compliance efforts which are characterized by the heavy reliance on assurances, statements of compliance, and other paper devices as a means for achieving compliance largely to the exclusion of field reviews and investigations.

[13] The term "onsite reviews" is used to describe field visits to offices, facilities, and other places from which recipients dispense services, in an effort to determine whether the recipient is complying with Title VI. "Onsite reviews" may be part of a periodic, regularly scheduled inspection program or may be *ad hoc* investigations made in response to specific information or allegations of discrimination. In practice, the scope, intensity, and duration of "onsite reviews" have varied greatly. For a further discussion of reviews and investigations see the *Compliance Officer's Manual*, (U.S. Commission on Civil Rights, October 1966).

the U.S. Commission on Civil Rights, was appointed to head the new office and was designated Special Assistant for Civil Rights. In a memorandum to agency heads and other top level administrators, the Secretary set forth the respective responsibilities of OCR and of the operating agencies.[14]

The responsibilities assigned to the Special Assistant and his staff included policy development; staff leadership; development of civil rights training programs; coordination of HEW's activities with the Department of Justice, the U.S. Commission on Civil Rights, the Civil Service Commission, and the White House; liaison with the Office of General Counsel; representation of the Department in dealing with Congress and other groups as related to the civil rights program; and establishment of a system of record-keeping, reporting and notification between operating agencies. OCR also was responsible for aiding in the investigation of "important or difficult cases" [15] and recommending action to the Secretary regarding unresolved cases. In situations where the Secretary had established guidelines, Libassi's office was empowered to take action on behalf of the Secretary. Where more than one agency within the Department was concerned with compliance on the part of the same recipient, OCR was to assign primary responsibility. In summary, the Special Assistant to the Secretary was to "exercise leadership and technical guidance and serve as the Secretary's representative with respect to compliance activities throughout the Department." [16]

The head of each operating agency within HEW was directed to designate a special staff assistant for civil rights. The staff assistant was to have duties parallel to those of the Special Assistant to the Secretary. Operating agencies were charged with responsibility for organizing and administering a plan to assure "effective compliance with Title VI," [17] including implementation of an "affirmative program to accelerate compliance" [18] and a compliance investigation and inspection program both on a routine basis and in response to complaints. Operating agencies were directed to resolve, insofar as possible, all routine problems of compliance and to report and recommend action on unresolved cases to the Special Assistant to the Secretary. At the same time,

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[14] Memorandum from the Secretary, "Title VI of the Civil Rights Act (12-14-65)."
[15] *Id.* at 3.
[16] Ibid.
[17] Ibid.
[18] Id. at 4.

the Secretary assigned each operating agency responsibility for compliance by specific types of institutions "as related to Title VI, with all other operating agencies to be guided by its findings."[19]

Each regional office was to have a special civil rights staff assistant to the Regional Director supported by funds from the operating agencies. The special assistant was to serve in a staff capacity, advising the Regional Director and the Special Assistant to the Secretary on progress and problems of compliance in his region. He was to help coordinate each agency's field activities with those of the other agencies, assist in "difficult negotiations," arrange for assistance from regional program staff as needed, organize employee training programs, and provide coordination and leadership in communitywide programs to accelerate compliance in localities receiving assistance under more than one departmental program.[20] Despite the broad authority assigned to regional civil rights staff assistants, the Commission found little indication that they played a significant role in HEW's Title VI effort.

During this phase of the Title VI program, compliance was left mainly to the operating agencies. Although, in theory, a compliance program administered by the operating agencies should have greater impact in terms of imparting equal opportunity objectives to program managers than a centralized operation would have, in practice there is little indication that this actually occurred. Compliance staff members connected with operating agencies were regarded as specialists in civil rights. They had no real authority with respect to program management. Rather, they were largely a separate unit with little in-

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[19] Ibid.

The following responsibilities were assigned:

(1) Public Health Service – health professions, education and research, research institutions, and State and local health departments; home health agencies, hospitals, and nursing homes. Compliance responsibility for hospitals, nursing homes, and home health services will be carried out by an interagency team under the leadership of the Public Health Service, with personnel contributed by Social Security, Welfare and Vocational Rehabilitation as well as the Public Health Service itself.

(2) Office of Education – elementary, secondary, and higher education institutions (except for health professions) and State departments of education (except for vocational rehabilitation).

(3) Social Security Administration – assistance, including staff and services, to the Public Health Service in connection with the compliance responsibilities for hospitals, nursing homes, and home health services.

(4) Welfare Administration – State and local welfare agencies and their vendors otherwise unassigned; assistance including staff and services to the Public Health Service in connection with compliance responsibilities for hospitals, nursing homes, and home health services.

(5) Vocational Rehabilitation Administration – State and local rehabilitation agencies and their vendors (see definition at p. – – infra.) otherwise unassigned; assistance including staff and services to the Public Health Service in connection with the compliance responsibilities for hospitals, nursing homes, and home health services.

[20] Id. at 5.

fluence on the programs of the agencies out of which they functioned. If anything, their efforts were impeded by the structure of which they were a part. Later, however, when the Title VI responsibilities of HEW were centralized, the knowledge of the program, which many on the equal opportunity staffs of the operating agencies had gained, proved of value. Many from these staffs moved directly into OCR and continued to function in their special areas.

PHASE III

In 1966 the House Appropriations Subcommittee directed HEW to place all departmental Title VI enforcement responsibilities in one office. The reorganization started late in Fiscal Year 1967 and was completed several months later.[21]

With the reorganization, all Title VI compliance activities and staff were withdrawn from the operating agencies and centralized within OCR. At the same time, a large number of OCR staff was reassigned to the regional offices. Each of the nine regions was to have a Civil Rights Director with sufficient staff to conduct the necessary field reviews and investigations in his region. The Atlanta, Dallas, and Charlottesville offices, which contain the major portion of civil rights staff, were the first to become operational.[22]

Although each of the field offices has had a somewhat different character and orientation, this does not appear to have hampered the conduct of the Title VI compliance operation. Anticipated problems of communication and coordination did not materialize to any significant extent. Indeed, the proximity to the field of operations has facilitated onsite reviews and investigations, permitted a closer working relationship with regional program administrators, and led to a better understanding of regional and local problems.

PHASE IV

On March 1, 1968, Secretary Gardner resigned and was succeeded in office by Wilbur J. Cohen.[23] Libassi left HEW in April 1968 to join Gardner at the Urban Coalition. Following Libassi's

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[21] See 32 Fed. Reg. 203. Although the transfer of functions for the Administration of Title VI from the operating agencies to the Office of the Secretary was announced in the Federal Register, Oct. 19, 1967, the reorganization process was a gradual one which began several months earlier and continued into the winter of 1967-68.

[22] At the time Commission field work was conducted for purposes of the present survey, several of the regional offices were still not fully staffed.

[23] Cohen was nominated to succeed Gardner on March 22 and was confirmed by the Senate on May 9, 1968.

resignation, Ruby G. Martin, formerly Director of Operations at the Office for Civil Rights at HEW, was named to direct that Office. She continued many of the basic policies which had been established during the Gardner/Libassi period.[24] In addition, certain new emphases were given to the compliance effort. For example, attention was focused on school segregation in the Northern as well as in the Southern and border States. Renewed efforts also were made to desegregate school districts in the South in which Negro students constituted a majority.

The distinguishing features which set Mrs. Martin's year in office apart from the preceding 2 years under Libassi are related more to the change in Secretaries than to the shift in OCR leadership. Under Wilbur Cohen, OCR, in effect, was downgraded. Secretary Cohen appeared to believe that minority groups were likely to benefit in the long run more from improvement in such basic programs as social security, welfare, health, and education than from vigorous enforcement of Title VI.[25] He felt this was particularly true in situations in which Title VI efforts jeopardized the chances for getting important social legislation through Congress or jeopardized chances for more substantial appropriations for socially valuable programs. Cohen's suggestion toward the end of his administration that the Title VI compliance operation might be better off if it were moved to the Department of Justice appears to reflect this viewpoint.

Mrs. Martin lacked the same access to the Secretary as her predecessor had had. Although the title, "Special Assistant to the Secretary for Civil Rights" was carried over, Mrs. Martin never had a relationship with Secretary Cohen comparable to that between Libassi and Secretary Gardner. In addition, an administrative layer was interposed between her office and the Secretary with the appointment of Edward C. Sylvester, Jr., as Assistant Secretary for Community and Field Services. Sylvester was assigned, among other duties, broad administrative responsibility for OCR and other component units within the Department.[26]

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[24] E.g., school desegregation efforts followed guidelines developed in 1967 and early 1968 and promulgated in March 1968; a program of state agency reviews which was on the drawing board during Libassi's directorship was initiated on a pilot basis in Maryland late in January 1968 and was extended to other States after Mrs. Martin assumed leadership of OCR.

[25] See, for example, the remarks made by then Under Secretary of HEW, Wilbur J. Cohen, at the 1967 biennial conference of the American Public Welfare Association, Washington, D.C., December 6–9, 1967. Cohen addressed the December 9 plenary session and also responded to questions from the floor relating to controversial provisions contained in the 1967 Amendments to the Social Security Act.

[26] This is not to imply that Sylvester in any way hindered the operations of OCR. On the contrary, Mrs. Martin stated that this posed no problem for her. She said the Secretary had been concerned about too many people reporting to him but that she herself continued to report directly. (Martin interview Aug. 23, 1968.)

CHAPTER III

ORGANIZATION AND STAFFING[27]

In terms of its structure, function, and personnel, the Office for Civil Rights (OCR) has been in a state of fluidity since its creation late in 1965. From the standpoint of size, however, OCR has changed very little over the last 2 years. In Fiscal 1968, there were 328 authorized positions within OCR with a budget of $4,359,000. In 1969, 326 positions were budgeted at $4,808,000. The 1970 budget request calls for 401 positions at an estimated cost of $5.5 million.

Although Title VI work absorbs the preponderance of OCR staff efforts, the 326 positions currently authorized cover a variety of other equal opportunity activities. For example, the Civil Rights Division of the Office of General Counsel has 33 positions, all of which come under OCR and are paid for entirely out of OCR's budget. Much of the Civil Rights Division's legal work involves Title VI matters, but time is also spent on contract compliance and other equal opportunity problems.[28] Thus an estimated 250 to 275 staff members, not 326, are engaged in Title VI activity. Title VI staff is responsible for monitoring compliance in approximately 20,000 school districts, 13,000 nursing homes, 9,000 hospitals, and approximately 20,000 health and welfare facilities and service units. On the basis of compliance reports and other current information, onsite compliance reviews were indicated for approximately 17,000 recipients of all types as of early 1969.[29]

Structurally, the present organization of OCR is relatively simple. The Office is headed by a Director who has under him a Deputy, an Assistant Director for Management, and staff assistants. Immediately below the Director are four major divi-

[27] This chapter describes the organization and staffing of OCR as it existed in early 1969. In December 1969 HEW announced a proposal for extensive reorganization of OCR.

No effort is made to trace the structure of HEW's equal opportunity machinery as it appeared in earlier years. An exercise of this sort would probably prove confusing to the reader and would add little to the utility of the report. However, in Chapter V, "Compliance Procedures," we have attempted to provide greater chronological perspective by outlining some of the trends and significant events which were the forerunners of current activities and policies.

[28] There are approximately 15 contract compliance specialists, six staff members assigned to in-house equal employment opportunity matters, and five or six miscellaneous non-Title VI jobs which are represented within OCR's staff of 326.

[29] Telephone conversation with Robert Brown, Assistant Director for Management (March 1969). Later chapters discuss the various compliance procedures which have been and currently are being used to cope with this task.

sions: 1) Operations Division; 2) Program Planning and Development Division; 3) Contract Compliance Division; 4) Information Division.

OPERATIONS DIVISION

HEW's basic Title VI compliance functions are the responsibility of the Operations Division which has two major components. One is the Education Branch which is responsible for elementary and secondary school desegregation and for compliance by colleges and universities. The second is the Health and Welfare Branch whose broad province encompasses all of HEW's other Title VI programs. Within the Education Branch, three separate units are responsible for elementary and secondary school desegregation in Southern and border States, elementary and secondary school desegregation in Northern and Western States, and compliance by colleges and universities throughout the country.

PROGRAM PLANNING AND DEVELOPMENT DIVISION

In theory, a Program Planning and Development Division (PPD) exists which was designed to include component units parallel to those within the Operations Division and to have, in addition, a Research and Data Analysis Branch. In practice, PPD never materialized in this way. The Research and Data Analysis Branch became the major component of the Division. But even here, a substantial portion of the functions of the Branch was contracted out earlier in Fiscal Year 1969. PPD as of January 1969 was, in actuality, an empty shell.

CONTRACT COMPLIANCE DIVISION

The Contract Compliance Division was established and staffed late in 1967. It is responsible for monitoring compliance under Parts II and III of Executive Order 11246 [nondiscrimination in employment by Government contractors and subcontractors and nondiscrimination in federally assisted construction contracts].

INFORMATION DIVISION

Major functions of the Information Division include receipt and distribution of all incoming OCR correspondence; [30] preparation of responses to inquiries about HEW's Title VI compli-

[30] Responsibility for receipt, logging, and control of all mail sent to OCR, including distribution and control of all complaints coming into the Office, is lodged with the Correspondence and Filing Branch.

ance program; liaison with the press and other interested organizations and individuals; and service as a central reference, materials, and information source for civil rights staff, other Federal agencies, press, interested organizations, and the general public.

CIVIL RIGHTS DIVISION OF OFFICE OF GENERAL COUNSEL

In addition to the four divisions described above, OCR receives direct staff assistance from the Civil Rights Division of HEW's Office of General Counsel.[31] The Civil Rights Division is responsible for providing legal services in connection with the activities conducted by OCR and in connection with the administration of Title IV of the Civil Rights Act of 1964 by the Office of Education. Responsibilities also include service as counsel for the Department and for other Federal departments and agencies in consolidated administrative proceedings under Title VI or Parts II and III of Executive Order 11246.

REGIONAL OFFICES

Each of HEW's nine regional offices was assigned OCR staff in 1968 pursuant to the 1967 reorganization. The following table shows the authorized staff for each region, as of the time this report was prepared.

Atlanta	46	Charlottesville	30
Dallas	29	San Francisco	19
New York	23	Chicago	25
Boston	8	Denver	5
Kansas City	1[32]		

The organization of each regional office parallels that of the central office in the sense that each has a Director, an Education Branch, and a Health and Welfare Branch. With the exception of Boston, Denver, and Kansas City each regional office has at least one person assigned to contract compliance, while the remainder work with Title VI. Each regional office also has a General Counsel who is available to the regional OCR for consultation and assistance when the need arises.

[31] The Civil Rights Division is included for budget purposes as a component of OCR, although it is actually a part of HEW's Office of General Counsel.

[32] The Kansas City Office has never been operational. The one staff position currently is occupied by a nonprofessional. At this writing, there is talk of reorganizing regional operations. In this event, Kansas City likely would be a first target. (Data on regional office staff size as of October 1969).

CHAPTER IV

STAFF DEVELOPMENT AND TRAINING

HEW is unique among Title VI agencies in having a separate Training and Staff Development (TSD) unit within its equal opportunity organization. TSD, created in 1967 during the reorganization is an integral part of OCR and is responsible "for planning and developing a comprehensive . . . program specifically designed to meet the performance needs of the OCR staff, clarify Title VI and contract compliance relationships of Agency program personnel and State agency counterparts." [33]

A major task of the three-man unit is seen as "encouragement of team building, communications cohesiveness, group growth, and interstaff relations which will improve OCR performance." [34] The unit has served as consultant not only to OCR staff in Washington and in regional offices but, on occasion, to staff from the operating agencies.[35] In addition, TSD has served to explain HEW civil rights policies and OCR functions to interested individuals and outside organizations.

Under Libassi, TSD was given firm support. This support and the discretionary powers afforded TSD have enabled the unit to do an effective job in the areas of orientation and training for new OCR employees.[36]

EARLY OCR TRAINING ACTIVITIES

Formal civil rights training within HEW dates back to early 1966 and predates TSD. From February through June 1966, training sessions were conducted in Washington for Equal Edu-

[33] Undated memorandum issued by the Office of the Assistant Director for Management (OCR): *Training and Staff Development, Purposes, Philosophy, and Organization.*

[34] Id at 1.

[35] Theoretically, TSD also has been available to assist State agency personnel in understanding and implementing their responsibilities under Title VI and Executive Order 11246. In practice, it has worked primarily with OCR staff. No instance has come to the Commission's attention in which training or consultation were directly provided to State personnel.

[36] In a memorandum to OCR professional staff in December 1967, Libassi stated: "I place the highest priority upon training and staff development and expect everyone to work closely with Hal [Harold Hunton, Chief of TSD] and his staff to identify ways to improve our effort and provide outstanding learning experiences for our staff. We must continually devise ways to improve performance, increase effectiveness, and insure maximum investment of our resources."

cational Opportunity Program (EEOP) staff by EEOP administrators assisted by Libassi's office.

At about the same time, an intensive effort was made to train compliance officers for hospital reviews in conjunction with certification of hospitals for participation in Medicare. In April and May 1966, the Office of Equal Health Opportunity (OEHO), which at the time was the compliance arm of the Public Health Service, trained approximately 250 Public Health Service and Social Security Administration staff members working out of the Atlanta Regional Office and an estimated 125 Federal officials from the Dallas region. Sixty medical students, who were employed to conduct reviews during the summer of 1966, received training in Washington.[37]

Although efforts were made to recruit persons for compliance work with experience in the subject areas (i.e., health and education) under review, few, if any, of the trainees possessed the combination of attributes—program knowledge, investigative skill, commitment to the objectives of Title VI, and an understanding of its legal requirements—which a compliance officer should have to do an adequate job. Despite the intensity of these early mass training efforts and despite the ability and sincerity of OEHO and EEOP officials, it simply was not possible to develop a cadre of high calibre compliance officers in the time allotted.[38]

TRAINING ACTIVITIES FOLLOWING OCR REORGANIZATION

With the reorganization of OCR and establishment of TSD, the focus and type of training shifted. There has been greater innovation. For example, consultants from the National Training Laboratories have been utilized to work with key OCR staff members in an effort to create a more effective and cohesive team. Since mid-1967, periodic meetings, consultations, and training sessions have involved program administrators from the Bureau of Family Services, the Work Experience and Train-

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[37] OEHO was assisted by the Commission on Civil Rights, the Civil Service Commission, the Department of Justice, and OCR in developing and conducting these training programs. Title VI training also was provided in 1966 for program staff from the Washington, Atlanta, and Kansas City offices who were detailed to conduct compliance reviews of hospitals and extended care facilities applying for Medicare certification. The last large scale training effort took place in early 1967 when more than 250 compliance officers received intensive training in Washington under EEOP auspices.

[38] The Commission knows of no effort to evaluate the performance of the 1966–67 hospital and school compliance reviewers. Findings of noncompliance received scrutiny but, in most instances, a finding of compliance never was reviewed unless a subsequent complaint brought it to the attention of HEW officials. HEW reports that desegregation plan school districts which were visited in 1966–67 were subsequently reviewed by OCR. However, thousands of hospitals, nursing homes, and extended care facilities today are deemed to be in compliance based on reviews conducted 2 to 3 years ago by persons whose only Title VI training came in the form of a "crash" training program on the eve of their field work.

ing Program, the Social Security Administration, and other constituent agencies within HEW. Most training activity now is conducted in small groups, sometimes with as few as four persons; rarely with more than a dozen.

In line with decentralization of OCR staff, training responsibilities as well as location have been shifted increasingly to the regional offices.[39] This shift perhaps is a natural outgrowth both of the decentralization of staff and of the leveling off of civil rights compliance activity. Despite significant staff turnover within OCR, there now is a large reservoir of experienced civil rights specialists. The regional offices are staffed and new employees come in increments of one and two, not 10 or 20. The branch chiefs of the regions orient and train new workers in their units. Experience and training in field reviews are obtained by accompanying senior workers on investigations, then conducting reviews under direct supervision. In large regional offices, such as Atlanta, the Regional Director participates in training. And, in Atlanta, orientation and training sessions are held, from time to time, for all employees who have joined the staff recently.

FUTURE POSSIBILITIES

With a diminishing influx of new OCR workers, the need for rapid orientation, training, and utilization of staff—a major factor in the establishment of TSD—is lessened. With decentralization of many OCR functions including training, there is some likelihood that the TSD unit, as it has existed for the past year or two, will be phased out.[40]

Some civil rights authorities believe it would be most unfortunate if TSD were to be completely abandoned. The need for equal opportunity training—for new as well as present staff—is a continuing one. At present, TSD is uniquely equipped from the standpoint of skill and experience to meet this need. It also represents the only major full-time resource and focal point which exists within the Federal establishment for planning, developing, and carrying out equal opportunity training. HEW is viewed by many as the standard bearer for Title VI implementation at the Federal level. Its ability to provide meaningful equal opportunity training for HEW personnel is one aspect of this role. Any reduction in training and staff development activity would further erode the Federal equal opportunity effort.

[39] TSD still furnishes resources, develops materials, format and provides other assistance to regional OCR staff. It also is available for consultation and direct participation in conducting training sessions.

[40] A single full-time training coordinator for TSD or perhaps a high level OCR administrator with part-time training responsibilities is likely to replace the present unit.

CHAPTER V

COMPLIANCE

The term compliance covers a variety of activities. It ranges from the mere issuance of explanatory pamphlets and educational materials to hearings pursuant to fund cutoffs. This chapter is primarily concerned with the procedures by which HEW has sought to assure compliance with Title VI – assurances, statements of compliance, compliance reports, complaint investigations, compliance reviews, and enforcement proceedings.

The chapter also is concerned with the role that program administrators have played in the HEW compliance effort. In the early years following the enactment of Title VI, responsibility for compliance rested with the operating agencies. Despite the fact that this responsibility now is centralized in OCR, program administrators continue to play a key role in determining whether the goals of Title VI are achieved.

ASSURANCES

HEW Form 441, "Assurance of Compliance with the Department of Health, Education, and Welfare Regulation Under Title VI of the Civil Rights Act of 1964," has been the prototype for assurances which most other Title VI agencies have required of their recipients. The specific language of the 441 was developed by HEW's Office of General Counsel in consultation with the Department of Justice. Numerous discussions were held and many drafts were prepared before the final version [December 1964] was issued. The assurance is set forth in three paragraphs contained on a single page.[41] By signing, the applicant for Federal financial assistance agrees to comply with Title VI "and all requirements imposed by or pursuant to the Regulation of the Department of Health, Education, and Welfare (45 CFR Part 80) issued pursuant to that title . . . ." [42] The applicant also express-

[41] A few pages of explanatory material in question and answer form accompany the distribution of each 441. ("Explanation of HEW Form No. 441, Assurance of Compliance with the Department of Health, Education, and Welfare Regulation Under Title VI of the Civil Rights Act of 1964.")

[42] HEW-441 (12-64).

ly recognizes that "Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance." [43]

In the months immediately following enactment of Title VI, it was generally believed that a well-drafted, legally sound assurance would provide the major tool in Title VI enforcement. Although varying degrees of opposition to the 441's were anticipated, optimists believed that, once the assurance was signed, the battle would be all but over. A less sanguine viewpoint regarded "paper compliance" as little more than a futile exercise.

Perhaps the most widely held opinion was that assurances would be only one of the instruments among the many which would have to be forged in the years ahead. According to this view, 441's would achieve at least two purposes. First, by placing recipients on notice that they were liable to forfeit Federal financial assistance if they violated Title VI and obtaining the signed assurance, it would spur many recipients to make *bona fide* efforts to comply with the law.[44] Second, the assurance itself would provide a clear legal basis upon which action could be taken to terminate funds if the recipient refused to sign or blatantly violated the agreement.

The extent to which these varying contentions have been borne out never has been accurately assessed. However, in the summer and fall of 1965, this Commission conducted a survey of health and welfare services in the South. Among its findings were the following: [45]

1. Written agreements to comply with Title VI had been obtained from most recipients of Federal financial assistance.
2. Progress had been made in the elimination of the most overt forms of segregation such as separate hospital wings and segregated waiting rooms and public facilities.
3. A few instances of rapid and complete hospital desegregation were noted.
4. There continued to be widespread segregation or exclusion of Negroes in federally assisted programs at the State and local levels in the areas visited. Discriminatory practices included:
   (a) assignment to wards or rooms by race

[43] *Ibid.*

[44] Closely associated with this view was the thought that the 441's and the explanatory material accompanying them would serve to educate recipients regarding the requirements of Title VI.

[45] *Title VI . . . One Year After* (U.S. Commission on Civil Rights, 1966.)

(b) exclusion of Negroes from many child care institutions, nursing homes, and training facilities
(c) segregation of patients in doctors' offices and referral of patients to hospitals on the basis of race
(d) segregation in some State operated hospitals and training facilities and some federally assisted local health programs.

The Commission noted "the failure to adopt adequate review and compliance procedures has made it impossible for HEW to know whether discrimination is actually being eliminated."[46] Thus on the basis of this early review, it appeared that the mere obtaining of assurances from recipients provided no guarantee of full compliance with Title VI. Subsequent reviews and studies have furnished additional evidence that submission of 441's did not in fact assure compliance with Title VI.[47]

Despite the clear limitations of placing sole reliance on submission of 441's, it would be inaccurate to conclude that they have been without value. Undoubtedly, in many instances, the 441 has been the pivot around which changes have taken place at the local level. For many recipients, the fight has focused on submitting an assurance itself. Once these recipients became convinced that this was a prerequisite to continued Federal aid, they generally submitted the assurance and altered existing discriminatory practices.

Present Status of Assurances

Submission of an assurance is required of each new recipient of Federal financial assistance and is required for any new program under which Federal aid is to be provided. For its own use and as part of its responsibility under the Coordination Plans,[48] HEW compiles and periodically publishes lists of Title VI assurances received. Listings are in three broad categories. The first includes medical, health, and welfare agencies and organizations which have submitted 441's. The most recent cumulative list contains the names of approximately 30,000 such recipients.[49] The second lists the names of colleges and universities which have submitted assurances. As of October 1968, nearly 2,500 institutions were listed.[50] The third list, elementary and second-

[46] Id. at 46.
[47] See for example, *Southern School Desegregation*, 1966-67, a report of the U.S. Commission on Civil Rights, July 1967.
[48] See Chapter VI for discussion of coordinated enforcement procedures and HEW's role therein.
[49] See Cumulative List No. 24 (August 1968).
[50] See Cumulative List C-32 (October 1968).

ary schools, has never been published. The Department explained that there are so many schools and school districts and the situation is so fluid due to construction of new schools and consolidation of former school districts that such a listing is impractical.[51]

These lists show only that an assurance has been received by HEW. Compliance status is not indicated. The latter is reflected by a weekly report[52] which lists all HEW recipients subject to compliance action and shows at what stage enforcement proceedings stand.[53]

STATEMENTS OF COMPLIANCE

Another paper device used by HEW has been its "Statement of Compliance with the Department of Health, Education, and Welfare Regulations Under Title VI, Civil Rights Act of 1964." These statements of compliance must be submitted by State agencies administering continuing programs in the areas of health, education, and welfare.

The statements of compliance are similar to the 441's in that they require a commitment to abide by Title VI and the HEW regulations thereunder. However, the statements of compliance are intended to be much more comprehensive and specific than the 441's. In addition to certain standardized language such as an introductory statement of purpose and enumeration of State agency practices regarding nondiscriminatory provision of services, use of facilities, opportunities to participate, and employment practices, they also call for information which varies from one State agency to another. Such information includes a listing of specific programs receiving Federal financial assistance administered by the State agency, a description of methods of administration by which the State agency will carry out the Title VI requirements, a listing of programs not in compliance, and a detailed account and timetable for coming into compliance.

An intensive effort was made in early 1965 to develop the statements of compliance, distribute them to State agencies, and review them intensively when they were returned. This latter process of review often led to considerable negotiation with the State agency. In some instances, statements of compliance went back and forth between HEW and the State several times before HEW deemed it acceptable.

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[51] Telephone conversation with Mrs. Phyllis Smith, OCR Information Office (Jan. 29, 1969).

[52] HEW Status of Title VI Compliance *Interagency Report*.

[53] E.g., "Notice of intention to initiate formal enforcement proceedings," "Title VI procedures complete; order terminating funds in effect after date indicated," etc.

In submitting their statements of compliance, the State agencies are not required to follow the identical format developed by HEW so long as all major areas, particularly methods of administration, are covered. In practice, agencies following the prescribed format verbatim, generally found that their statements of compliance were accepted readily. Agencies which departed from the format, including those which made a *bona fide* attempt to provide more detailed information or to adapt some aspect of the statement to fit more appropriately the peculiarities of its own programs, often were subject to question.

The negotiating process which revolves around the statements of compliance has been strictly a matter of paper. In few instances prior to 1968 had HEW gone beyond the four corners of these agreements and attempted to evaluate the actual compliance status of the particular State agency. Some HEW officials have felt that, as a tactical matter, it would be unwise and unfair to ask the State agency to make certain promises and give certain assurances and then proceed immediately to verify the truth of the agency's statements. Others have felt that, as a matter of legal strategy, it made more sense to obtain the statements of compliance and rely on them in good faith. Then, they felt, if subsequent events proved that the statements could not be relied upon, it would be easier to begin proceedings against the State. In retrospect, these views simply may have been rationalizations which masked practical considerations. In reality, there has been neither sufficient staff nor sufficient technical knowledge available for the kind of lengthy, intensive scrutiny which a review of a continuing State program requires.[54]

Even "paper compliance" has been time consuming and difficult. On June 3, 1965, then Assistant Secretary Quigley sent a forceful memorandum to heads of operating agencies, regional directors, and other key HEW officials with Title VI responsibilities deploring the slow pace at which the Department was moving. Quigley's memorandum read, in part, as follows:

> Today is June 3rd.
>
> Exactly 6 months ago, on January 3, 1965, the Department's regulations for implementing Title VI of the Civil Rights Act of 1964 became effective. These regulations require that in order to continue to qualify for Federal financial assistance the State agency shall submit "a statement that its

[54] The State agency review program discussed below is an attempt to deal with this problem.

program is conducted with all the requirements imposed by or pursuant to the Department's regulations."

Six months later, here is what our scoreboard shows:

1. The *Office of Education* has accepted statements of compliance from every State in the Union except Alaska and Alabama.
2. The *Vocational Rehabilitation Administration* has accepted statements of compliance from 25 states.
3. The *Public Health Service* has accepted statements of compliance from 13 states.
4. *Surplus Property* has accepted statements of compliance from 10 states.
5. The *Welfare Administration* has accepted statements of compliance from 1 state.

He went on to say:

> In my judgment, six months time was an adequate time within which to complete this phase of our implementation of the Title VI Regulations. Except for OE and VRA, this matter has not been given either the priority or the competency or both that it demands. I am disturbed that as of this date, 18 Public Health and Welfare State plans are still being reviewed in the regional offices. I am doubly disturbed that earlier this week all of the PHS plans that had been submitted to the Dallas Regional Office had to be returned to that office because none of them were adequate.[55]

As the Commission found in its survey of desegregation of health and welfare services in the South,[56] efforts to follow up the statements of compliance with field reviews had not been undertaken as of the end of 1965. Even in those instances in which State agencies listed programs not in compliance, no consistent effort was ever initiated by HEW to ascertain whether the timetables set for compliance actually were adhered to. With one or two exceptions,[57] no program of any substance had been launched for reviewing compliance in State administered continuing programs until the spring of 1968, almost 3 years after most statements of compliance had been submitted.

Alabama's Challenge

Although resistance and delay marked the submission of state-

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[55] Excerpts from memorandum of June 3, 1965 from James M. Quigley, Assistant Secretary, to Heads of Operating Agencies and others.

[56] *Title VI . . . One Year After*, op cit. supra.

[57] See, for example, discussion of Mississippi welfare review at pp. 49–52.

ments of compliance by many State agencies, particularly those from the South, only Alabama flatly chose to defy (and thereby put to a test) HEW's legal authority to establish certain requirements and impose certain conditions under Title VI. Specifically, Alabama posed the question: "Are the regulations promulgated pursuant to Title VI consistent with achievement of the objectives of the statute authorizing the financial assistance?" [58]

After a protracted hearing, HEW's authority to require submission of an adequate statement of compliance, including "a clear and adequate commitment to insure non-discriminatory operation of its Federally aided welfare programs . . . an adequate statement of the extent to which racial discrimination presently exists in connection with its Federally assisted welfare programs . . . proposed methods of administering its Federally assisted welfare programs [and acceptance of] responsibility for assuring that third parties . . . shall provide such care [and services] without racial discrimination," was upheld.[59]

Current Situation

At present, HEW has on file statements of compliance for all of the State-administered continuing programs receiving HEW funds. These are incorporated as part of the State plan and carry at least the same weight as any other provisions of the State plan. In theory, they are subject to the same review and scrutiny by program administrators (in contrast to OCR staff) as any other requirement for Federal funding under the particular authorizing legislation, Despite this, few program administrators have gone back and reviewed the statements of compliance once they were accepted and filed as part of the State plan. It also is clear that many officials from these operating agencies never have regarded Title VI enforcement as one of their primary responsibilities.[60]

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[58] Reply Brief of Respondents, p. 1. In the matter of Alabama State Board of Pensions and Securities, Alabama State Department of Pensions and Securities. (Submitted by Reid Barnes, Special Assistant, Attorney General for the State of Alabama, Nov. 24, 1965.)

[59] Action of the Secretary of Health, Education, and Welfare Docket No. CR-1. In the Matter of the Alabama State Board of Pensions and Securities and the Alabama State Department of Pensions and Securities, pages 12-13. (Jan. 13, 1967).

[60] See, e.g., memorandum from Sherry Arnstein, Staff Assistant, to Shelton B. Granger, Deputy Assistant Secretary, "Summary of hospital compliance situation under Title VI" (Aug. 31, 1965). In discussing compliance problems, especially "motivation and training of staff," Mrs. Arnstein stated, in part: ". . . many HEW program officials are personally not in favor of Title VI; others don't yet recognize the various forms of discrimination in their programs; some would rather not be involved in the compliance effort. Another major problem is that visits to hospitals and negotiations with hospitals are carried on by program officials who have other program assignments which take priority over Title VI responsibilities."

Similar views were expressed by Robert Nash, former chief of the Office of Equal Health Opportunity, and Margaret Emery, former Special Assistant to the Commissioner (Welfare) for Civil Rights.

There was a widespread feeling of relief on the part of many program administrators when, in 1967, civil rights compliance responsibilities were centralized in OCR.[61] Statements of compliance are no longer regarded by HEW as an effective means of achieving compliance with Title VI. Whether they once served a useful purpose, by setting forth certain requirements and guidelines and by putting State agencies on notice regarding Federal expectations, is now academic. As experience has increasingly borne out, onsite visits of recipients' facilities and field reviews of services are the heart of a productive Title VI compliance effort.

COMPLIANCE REPORTS

In terms of significance, compliance reports lie midway between the paper operations involved in obtaining assurances and statements of compliance, and onsite investigations and reviews which form the basis for enforcement action. The following discussion examines reporting requirements and types and utility of reports as used in the three major subject areas.

Elementary and Secondary Education

Until the fall of 1967, HEW's requirements for reports from elementary and secondary school systems were minimal.[62] Requirements were expanded in September 1967 when letters were sent to the chief school officials of each State explaining the "Fall 1967 Report on Enrollment and Staff." [63]

In meeting with HEW officials to discuss the proposed 1967 forms, staff members of the Commission on Civil Rights and the Bureau of the Budget were critical of the fact that insufficient information was being sought. Budget Bureau approval was granted, however, with the understanding that the forms would be reviewed the following year and revisions would be made and additional data elicited based on the experience gained during use of the initial forms. In practice, the capacity of HEW to

[61] Interview with Margaret Emery Mar. 26, 1968.

[62] Prior to 1966, there were no uniform reporting requirements. In 1966, only school systems desegregating under voluntary plans were required to report student enrollment and staff assignments.

[63] See "Letters to Chief State School Officers on Fall 1967 Title VI Compliance Reports for Elementary and Secondary School Systems," Sept. 13, 1967. Two forms comprised the fall report. The first was designed for schools which had assured compliance by means of HEW Form 441 (that is, schools which never had had a dual school system based on race or had eliminated such systems). The second was designed for schools and school systems which had assured compliance by means of a voluntary desegregation plan (HEW Form 441-B districts). Both forms called for basic identifying data such as location, name of school system, type of school plus a breakdown by race of pupils, teachers, and principals.

assimilate and analyze the information obtained through these forms generally proved inadequate.[64]

Early in 1968, OCR proposed revisions of the elementary and secondary report forms. As finally approved by the Bureau of the Budget, the School System Report,[65] in addition to the usual identifying data, calls for numbers of enrolled students by race (American Indian, Negro, Oriental, Spanish surnamed American, and total) and full-time professional and instructional staff by race. The Individual School Report [66] is similar in format to the School System Report. However, it calls for a breakdown of full-time professional staff into four categories: principals, assistant principals, classroom teachers, and other instructional staff. For each subcategory, a racial breakdown is required.[67]

OCR staff members were reluctant to call for more detailed information. They contended that the primary purpose of the forms was to flag schools and school systems for compliance reviews. For this purpose, it was argued, the information which was being sought regarding pupil enrollment was sufficient. Moreover, they acknowledged OCR's inability to utilize additional data either for compliance purposes or program evaluation.

Beyond this, however, it would appear that OCR's reluctance reflected the cautious atmosphere which prevailed during the spring and summer of 1968.[68] The HEW appropriations bill was

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[64] There was one exception, however. Forms 7001 and 7002 (schools and school systems which had assured compliance by means of a voluntary desegregation plan) were successfully utilized for selecting districts for notice that their compliance status was in question. These schools were scheduled for review between March 1968 and the beginning of the 1968–69 school year. More than 300 districts were classified in one or another of five categories of priority for review on the basis of these compliance report forms.

[65] OS/CR-101, School System Report. (See also OS/CR-101-1, School System Report-Supplemental Information for School Systems Desegregating Under a Court Order.)

[66] OS/CR-102, Individual School Report. (See also OS/CR-102-1, Individual School Report by Grades.)

[67] At the suggestion of Commission staff, HEW also requested information on the year in which structural additions were made to the school. By eliciting a specific date of additions, it was hoped that some light might be shed on the relationship between enlargement of the school facility and desegregation (or perpetuation of existing racially separate schools). Other Commission recommendations were rejected by HEW. See memorandum from Carol B. Kummerfeld, then Director, Office of Federal Programs, to Karen Nelson, Bureau of the Budget, "1968 Elementary and Secondary School Compliance Report" (Apr. 22, 1968). Included in the memorandum was a list of suggestions for next year's report (1969). Recommendations were made for questions dealing with curricula and activities available at various schools; establishment and maintenance of school attendance zones; feeder patterns and transportation patterns; assignment of students to curricula, classes and activities within the school, etc. It was thought that this more detailed kind of information could be developed on a selected sample of school systems. Finally, the memorandum suggested a series of areas in which it would be important to develop information "in cases of inferior educational facilities and services such as exist in areas where there are students of a particular race, color, or national origin concentrated in certain schools or classes and in which educational opportunities are likely to be less favorable for educational advancement than at schools or classes attended primarily by students of any other race, color or national origin." (Language is taken from the 1968 Guidelines.)

[68] OCR staff questions this interpretation. Dr. Lloyd Henderson, for example, reported that it was Libassi who wished to limit data. The fact remains, however that the clearance process for these forms was protracted and the final decision came well after Libassi's resignation.

pending in Congress and the school desegregation program was due for its annual congressional scrutiny. Both Libassi and his Deputy, Derrick Bell, had resigned earlier in the year. HEW had a new Secretary who was believed to be more concerned with other priorities than with Title VI enforcement. A sense of change, uncertainty, and vulnerability prevailed at OCR.

Higher Education

Institutions of higher education were required to file compliance reports in 1967 and again in 1968. The 1967 report which was to be submitted to the National Center for Educational Statistics (NCES) by November 15, 1967, was divided into two parts. The first, OE–7000–1, simply called for identifying data for the entire institution including the nature and size of component units and the various levels of degrees offered. The second, OE–7000, called for substantive data by race. In addition to the usual identifying information, major categories of questions dealt with admission practices and policies, student enrollment by race (white, Negro, and other), and "services, facilities, activities, and programs."

The Higher Education Compliance Report form currently in use[69] calls for fewer data than its predecessor. In a memorandum to presidents of institutions of higher education which accompanied distribution of the 1968 report form, Libassi noted certain changes from the 1967 report. The "much simplified" format covered "one short page." The requested data were expected to be "reasonably accurate" as opposed to the "exact data" which OCR previously had suggested would be required in 1968. The filing date was extended to December 15, 1968.

In addition to basic identifying data on the institution, the present report has two substantive sections. The first deals with student enrollment and, in contrast to the 1967 form, calls for a more precise racial breakdown (Spanish surnamed American, Oriental, American Indian, Negro, and total of all students). The second category, "admissions, services, facilities, and activities," is a slightly abbreviated version of the 1967 report. Information on such matters as staffing, curriculum, fraternities,

[69] OS–34, "Compliance Report Institution of Higher Education Under Title VI of the Civil Rights Act of 1964." In the "Memorandum for Presidents of Institutions of Higher Education Participating in Federal Assistance Programs" (February 1969), Ruby Martin announced postponement of the compliance report for the 1969–70 school year but stated that a report would be required for the fall of 1970.

and sororities is not called for. OCR explained that the data analysis capacity of NCES (and later of OCR's Data Analysis Branch) was too limited. Moreover, as of April 1968, only information on student enrollment was to be used in planning compliance reviews—other data would be considered superfluous.[70]

Despite the simplicity of the form, there was considerable opposition from college presidents and administrators of various institutions of higher education to filing the reports. Some, including those outside the South, resented what they considered an intrusion into their affairs and an interference with academic freedom. Some found questions on the race of students "repugnant." [71]

In view of the furor which a relatively innocuous report form had engendered, HEW did not wish to antagonize its recipients further by requesting information which it believed to be of limited value. Consequently most of the questions proposed for inclusion in the report form, such as those dealing with staffing and curriculum, were omitted.

Hospitals and Extended Care Facilities

The first medical facilities compliance report form was approved by the Bureau of the Budget early in 1966 and was in use by HEW through the early part of 1969.[72] The 1966 report form found its major use in conjunction with the compliance efforts made prior to certification of hospitals for Medicare.

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[70] On the basis of the reports, only those colleges whose undergraduate Negro enrollment was 1 percent or less were selected for possible review. The 1 percent criterion yielded "several hundred schools." Responsibility for field reviews was assigned to the regional offices serving the area in which the schools were located. Since the number of colleges subject to review on the basis of the 1 percent criterion was far greater than OCR's staff could handle, other less specific criteria (e.g., "other known discriminatory practices") were utilized to select the colleges which actually would be visited. In the final analysis, the OCR Regional Director decided which colleges, from among the 1 percent group in his area, would be reviewed. Interview with Solomon Arbeiter, Higher Education Coordinator (Apr. 16, 1968).

[71] Arbeiter interviews, Apr. 16 and Apr. 25, 1968.

[72] PHS–4867 (2–66) "Medical Facilities Compliance Report (Civil Rights Act Title VI)." In addition to basic identifying data, the form called for information in about a dozen areas. Items pertained to nondiscriminatory use of facilities including rooms, wards, nursery facilities, labor and delivery rooms, admission offices, dining areas and cafeterias, toilet and laboratory facilities, waiting rooms, clinics, emergency rooms, etc. There were questions on staff privileges of Negro physicians and dentists; membership requirements of city, county, and State medical and dental societies; and present status of facilities, professional staff (i.e., physicians and dentists, interns, residents, student nurses, practical nurses in training, and medical technologists in training) by race (Negro, white, other). The major item on the form, from the standpoint of determining which facilities required compliance reviews, was the "patient census." The "patient census" was a breakdown by race (white, Negro, Indian, Oriental) and by occupancy (buildings, wings, floors, and room type) as of the day the form was completed. In determining review priorities, PHS officials compared this information to the approximate percentage of nonwhite population in the service area from which 75 percent of the facilities' patients were drawn.

It has since been used for new facilities and for those receiving Federal financial assistance for the first time. There are no annual reporting requirements and, except for those facilities whose compliance status is in doubt, only one report has been obtained from each hospital.

Two months after the Medical Facilities Compliance Report form was issued, the Extended Care Facilities (ECF)[73] Compliance Report was approved,[74] but has never been used to determine priorities for reviews to the extent that the Medical Facilities Compliance Report was utilized. In large measure, ECF reports simply have been another aspect of "paper compliance." HEW recently updated, with slight revisions, both the Medical Facilities and ECF Compliance Report forms.[75]

Welfare

With the exception of a nursing home report form,[76] compliance reports have not been utilized in any of HEW's State administered welfare programs. Although the Welfare Administration added a civil rights component to its quality control system in 1968, only a limited amount of information is elicited and only a small sample of the total case load is reviewed.[77] From a com-

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[73] ECF's are nursing homes and care settings for chronically ill and other long term patients.

[74] PHS-4888 (4-66) "Extended Care Facilities (ECF) Compliance Report (Civil Rights Act Title VI)." The ECF report was distributed together with HEW Form 441 primarily in conjunction with participation in Medicare. The ECF form contained many similarities to the medical facilities compliance report form. There were questions on admission and distribution of patients, utilization of services and facilities, and staffing. In addition there was a question on transfer agreements and referral system. The category, "Spanish-American," was added to the other racial classifications listed in the report.

[75] The new forms, approved by the Bureau of the Budget on February 6, 1969, simplify reporting procedures. The form used by hospitals eliminates questions on buildings, wings, and floors while retaining questions on room occupancy and patient census. A single "yes" or "no" question on service and facility utilization replaces more than a dozen items in the old form. In some instances, however, more specific data are requested. A question on the old form simply requesting the number of "Negro physicians applying for staff privileges since 1964" was replaced by one on the status of applications for "staff positions" received during the previous 2 years. The item is broken down into subdivisions of physicians and dentists and racially broken down by "Spanish-American, American Indian, Negro, and total." (The category, "Spanish-American," was not included in the 1966 Medical Facilities Compliance Report form.) The new ECF form also simplifies the questions on service and facility utilization but it also adds the item: "Describe briefly any amendments to your civil rights policy or implementation efforts made since the last compliance report to this office." Every hospital and extended care facility is required to complete a report form at least biannually and new facilities receiving Federal assistance for the first time are required to complete a form prior to the determination of compliance.

[76] FS-5037 (11-66) "Nursing Homes Compliance Report (For Use by State Agencies Administering Approved Public Assistance Plans)" HEW, Welfare Administration, Bureau of Family Services. The Nursing Homes form is identical in all substantive respects to the ECF compliance report form and has been used by the Welfare Administration for nursing homes and vendors of similar services to State Welfare departments.

[77] See HEW State Letter No. 1018, dated February 28, 1968, to State Agencies Administering Approved Public Assistance Plans "Quality Control – Utilization of QC for Review of Civil Rights Compliance;" Inst. Form APA-341 – Supplement C-1 (2/68), Budget Bureau No. 83-R0079, "Civil Rights Review in Quality Control Case Actions."

pliance standpoint, the civil rights component of quality control has been of negligible value. No investigations or reviews have been initiated as a result of information obtained from these questionnaires.

Complaints

The Title VI regulations give any person, who believes he has been subjected to discrimination, the right to file a written complaint with the Department. The regulations also impose upon the Department the responsibility for making a "prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply. . . ." [78]

Prior to establishment of OCR, complaints furnished practically the only basis for compliance activity on the part of HEW officials. They served to justify certain policies,[79] such as the priority which was given to particular field investigations and particular programs at the expense of others. They also served to justify, by their absence, inactivity in other areas. For example, as between health and welfare, there were far more complaints registered with HEW about hospitals than about welfare programs. There were correspondingly many more field investigations undertaken during this period of hospital facilities than of welfare facilities and services.

The volume of complaints concerning health facilities began to decline by mid-1967. After OEHO was disbanded, the Health Branch of OCR's Operations Division devoted renewed attention to complaints which at the time were coming in at the rate of about two or three a week.[80] The Health Branch was in existence for only a few months during a period of transition. Its successor, the Health and Welfare Branch, has concentrated on broad reviews of State agency programs and has played down complaint investigations.

In the field of education, early compliance efforts were, to a large extent, taken up with investigation and resolution of complaints.[81] Following the 1967 reorganization, complaint-centered

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[78] HEW Title VI Regulation, 45 CFR 80.7. In practice, the requirement of "prompt investigation" has been loosely construed.

[79] For example, priority for review of hospital and health facilities in conjunction with certification for Medicare was determined in part on the basis of complaints outstanding against certain facilities.

[80] Actually, complaints were the "number three priority" of the Health Branch. Top priority was given to cases involving hearings or court action (there were very few of these and not many staff members were involved). The second priority, which took the bulk of staff effort, involved clearance of new Medicare and Hill-Burton applicants (about 30 per month) and clearance of an estimated 30 extended care facility applicants each month. Interview with Dean Determan, then Health Branch Chief (Mar. 12, 1968).

[81] *Survey of School Desegregation in the Southern and Border States, 1965–66* (U.S. Commission on Civil Rights, February 1966).

compliance activity was de-emphasized. Currently, as a general rule, complaints are investigated to the extent that they correspond with schools and school districts for which field reviews are scheduled. If there is no relationship, they receive low priority. The requirement set forth in the regulations for "prompt investigation" is ignored unless the complaint reflects an emergency situation or, for some other reason, warrants speedy review.

Welfare complaints have averaged about four or five a month since 1965.[82] These complaints usually have been referred to the State welfare agency for review. In general, they have played a very minor role in welfare compliance operations.

Present Complaint Procedures

With the reorganization of the OCR came a centralized complaint procedure for the first time since 1965 and a more systematic method of docketing, processing, and following up on complaints.

The Correspondence Branch within the Information Division assumes responsibility for assuring response to a letter of complaint. Since OCR has staffed its regional offices, complaints are routed directly by the Correspondence Branch to the Regional Director. The Regional Director, in turn, assigns the complaint to the appropriate Branch Chief who works the investigation into the particular schedule of his branch.[83]

There is no single way in which complaints are investigated. In some cases, field staff will conduct an onsite review; in other cases, the matter will be handled by telephone. With increasing frequency, State agency personnel or regional program staff are asked to deal with the situation—often OCR staff is not directly involved. After the complaint has been handled in the field, its disposition is funneled back through the Regional Director to the Correspondence Branch and its disposition is noted.

In theory, the system is efficient and represents a distinct improvement over the situation which prevailed prior to the

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[82] During 1967, welfare rights workers in Mississippi began to flood HEW with welfare complaints and barrage the State with requests for fair hearings. This admittedly was a tactic to pressure "the system" in the hope of bringing about fundamental changes. Apparently, figures were not maintained on the number of such complaints and requests. HEW officials subsequently met with local civil rights leaders and reached an agreement after which the tactic of overwhelming HEW with complaints was discontinued.

[83] If, for example, a State agency review is scheduled within the next 60 days, the complaint will be held for consideration in the course of the review. (Meeting with Louis Rives and others at the Bureau of the Budget, Feb. 6, 1969.)

reorganization. At that time there was no central control mechanism. It often was difficult to determine where a complaint should be referred or ascertain what action had subsequently been taken. Before the reorganization it was not uncommon for complaints to disappear altogether. However, OCR's complaint procedure still has flaws. As recently as the summer of 1968 when the Commission on Civil Rights attempted to ascertain the status of 17 complaints referred to HEW during the first half of the year, HEW reported there was "no record of receipt" on five of these. Commission files revealed that on three of the complaints an interim reply had actually been received from an OCR official (although no final disposition was reported). With respect to two other complaints, Commission records indicated that letters had been sent to HEW. A further attempt in December 1968 to follow up on those complaints not accounted for has been unsuccessful to date. In addition to these five specific cases, the Commission was unable to obtain information through OCR regarding three complaints which OCR had passed on to the Welfare Administration.

Gaps are evident in OCR's complaint control system. Indications are that these deficiencies in HEW's complaint procedures reflect a general shift in emphasis away from what was once primarily a complaint-oriented compliance program. The Commission does not suggest that this shift in priorities has been undesirable. On the contrary, given the severe limitations of staff, the comparatively low status accorded to complaints undoubtedly is a wise ordering of enforcement priorities. Experience has shown that agencies which are heavily "complaint-oriented" frequently have the least effective overall compliance program. Nevertheless, this kind of approach is likely to create disillusion and loss of faith by complainants in the will and ability of the Federal Government to respond quickly and effectively to the grievances of its citizens.

COMPLIANCE REVIEWS

The term "compliance review" has been used broadly to describe everything from an investigation of a particular complaint in a specific facility to a comprehensive and detailed examination of a State administered continuing program involving a variety of services, numerous offices and facilities, thousands of employees, and countless subrecipients. It is a process with many components and one which varies with the

nature of the Federal aid program, the particular type of recipient, and other factors.[84]

The focus of the following discussion is on compliance review activity which takes place in the field (in contrast, for example, to "reviews" of reports submitted by the recipient). The three major program areas, education, health, and welfare, are considered separately.

Elementary and Secondary Education

Elementary and secondary education has been at the forefront of Title VI activity and controversy from the start. The difficult history of Federal efforts to achieve public school desegregation has been well documented.[85] The early struggle to get school districts to agree to desegregate, the failure of "freedom of choice" plans, the inadequacy of procedures for evaluating plans, and the lack of staff for effectively monitoring compliance were described by this Commission in its 1966 report.[86] The report covers a period that roughly coincides with what has been termed "Phase I," the period of "paper compliance."

From late 1964 until the mid-1967 reorganization, primary responsibility for enforcement of Title VI with respect to schools lay with the Office of Education (OE). The Office of Education's enforcement branch, first called the Office of Equal Educational Opportunities (OEEO) and later the Equal Educational Opportunities Program (EEOP), initially embarked on a series of negotiations with individual school districts in an effort to induce them to submit satisfactory voluntary desegregation plans. However, lack of staff precluded the possibility of an adequate case-by-case review. Consequently, on April 29, 1965, the Office of Education issued guidelines which set forth the ways by which a school district could qualify for Federal financial assistance.[87]

1965 Guidelines– The 1965 Guidelines, the first of three sets of guidelines which have been issued, provided three possible paths which a school district might follow to satisfy Title VI requirements:

1. If the school district were fully desegregated, it could simply file a Form 441 with HEW;

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[84] The *Compliance Officer's Manual*, *op. cit. supra*, discusses a variety of procedures encompassed in the course of compliance reviews. No definition, however, is attempted.

[85] See particularly, *Survey of School Desegregation in the Southern and Border States, 1965-66* (U.S. Commission on Civil Rights, February 1966) and *Southern School Desegregation, 1966-67* (U.S. Commission on Civil Rights, July 1967).

[86] *Op. cit. supra.*

[87] See, "General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools." (Commonly referred to as the "1965 Guidelines.")

2. If it were subject to a final order of a U.S. court to desegregate, it could submit the order to HEW together with an agreement to abide by it and any modification thereof; or
3. It could submit a desegregation plan for the school system subject to acceptance by the Commissioner of Education.

Under the last method, school districts could assign students to schools based on nonracial, geographic attendance zones; could permit students to select their schools through freedom of choice granted to pupils and parents or guardian; or could utilize some combination of the two. The fall of 1967 was set as the target date for extension of desegregation to all grades. "A substantial good faith start" was called for with a minimum of four grades to be desegregated starting with the 1965–66 school year.

Subsequent experience revealed that the "freedom of choice" plans permitted by the 1965 Guidelines were not resulting in significant school desegregation. Less than a year later, on March 7, 1966, HEW issued new guidelines designed to provide objective criteria for determining whether "free choice plans" were bringing about school desegregation at an acceptable rate.[88]

1966 Guidelines—The 1966 Guidelines established standards based on the percentage increase of students transferring from segregated schools.[89] The Guidelines also established requirements, though not in percentage terms, for faculty and staff desegregation. Specifically, assignment of new teachers and staff on the basis of race was prohibited unless it was designed to correct the effects of past discriminatory practices. In addition, professional staff assignments were not to be such that schools became racially identifiable. School systems were

[88] See, "Revised Statement of Policies for School Desegregation Plans Under Title VI of the Civil Rights Act of 1964," 45 CFR 181 [the "1966 Guidelines"].

[89] ". . . the Commissioner will, in general, be guided by the following criteria in scheduling free choice plans for review:

"(1) If a significant percentage of the students, such as 8 percent or 9 percent, transferred from segregated schools for the 1965–66 school year, total transfers on the order of at least twice that percentage would normally be expected.

"(2) If a smaller percentage of the students, such as 4 percent or 5 percent, transferred from segregated schools for the 1965–66 school year, a substantial increase in transfers would normally be expected, such as would bring the total to at least triple the percentage for the 1965–66 school year.

"(3) If a lower percentage of students transferred for the 1965–66 school year, then the rate of increase in total transfers for the 1966–67 school year would normally be expected to be proportionately greater than under (2) above.

"(4) If no students transferred from segregated schools under a free choice plan for the 1965–66 school year, then a very substantial start would normally be expected, to enable such a school system to catch up as quickly as possible with systems which started earlier. If a school system in these circumstances is unable to make such a start for the 1966–67 school year under a free choice plan, it will normally be required to adopt a different type of plan." (1966 Guidelines 181.54)

charged with a "positive duty" to undertake the staff assignments and reassignments necessary to eliminate past discriminatory assignment patterns.[90]

However, even these standards were not adhered to by EEOP. For example, David S. Seeley, then Assistant Commissioner for Equal Educational Opportunities, in a memorandum to all EEOP staff members, stated that adequate progress for districts with less than 4 percent student desegregation in 1965–66 was "*not any fixed percentage . . .*; adequate progress for 1966–67 might be 10 percent or even less; . . . although 10 percent progress would be adequate."[91] Requirements that school districts submit figures on student and staff desegregation no later than 15 days after the close of the spring choice period (i.e., the period during which choices for the coming school year were to be submitted) were not enforced. In some cases, delays in reporting allowed little time for HEW intervention prior to the 1966–67 year despite the fact that in some cases the reports reflected inadequate progress.

Until the 1967 reorganization, staff from EEOP, under Seeley's direction, reviewed desegregation plans and assurances, attempted to negotiate voluntary compliance, and conducted field investigations to evaluate compliance with Title VI, the regulations, and the Guidelines. Initially, field reviews were limited to investigations of complaints and reviews of school districts which refused to submit desegregation plans. Following promulgation of the 1966 Guidelines, additional compliance reviews were undertaken starting in school districts with the worst performance records and eventually reaching districts which more nearly met the Guideline expectations.

The EEOP was grossly understaffed. For Fiscal Year 1967, HEW requested $1,543,000 for EEOP compliance activities. Congress appropriated less than half that amount. EEOP's total professional staff consisted of 63 persons. Of this total, only 37 were available for assignment to the Southern and border States for enforcement purposes, about one-fourth of what EEOP estimated necessary.[92] (During the summer of 1966, EEOP efforts were reinforced by about 100 temporary employees, primarily law students, who served as compliance officers.)

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[90] *Id.* at 181.13.

[91] Seeley memorandum to staff (July 29, 1966).

[92] *Southern School Desegregation 1966–67, op. cit. supra* note 85, at 33.

1968 Guidelines—In March 1968, HEW promulgated "Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964," commonly referred to as the 1968 Guidelines. The 1968 Guidelines, currently in use, "generally are applicable to school systems throughout the U.S."[93] Although the policies "*do not require the correction of racial imbalance resulting from private housing patterns, neither the policies nor Title VI bars a school system from reducing or eliminating racial imbalance in its schools.*"[94] (Emphasis supplied.)

The 1968 Guidelines set forth general compliance policies covering such matters as school organization and operation;[95] equal educational opportunity for all students within any given system; inferior educational facilities and services;[96] and nondiscrimination in recruitment, hiring, assigning, promoting, paying, demoting, and dismissing professional staff.[97]

The Guidelines also contain compliance policies applicable to school systems eliminating a dual structure pursuant to a voluntary plan. They provide that "generally school systems should be able to complete the reorganization necessary for compliance with the law by the opening of the 1968–69 or, at the latest, 1969–70 school year."[98] Matters such as student assignments, free choice, geographic attendance zones, reorganiza-

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[93] 1968 Guidelines, Subpart A, Section 5.

[94] *Ibid.*

[95] For example, the school systems' responsibility for eliminating segregation covers such actions as:
- determining the curricula and activities available at particular schools;
- setting the grade levels and number of students assigned to particular schools;
- planning the location and size of new schools and additions to or rehabilitation of existing schools;
- establishing and maintaining school attendance zones, school feeder patterns, and school transportation patterns;
- granting student transfers from school to school or school system to school system;
- assigning students to curricula, classes, and activities within a school.

[96] Examples of disparities which might result in denial of equal educational opportunities include:
- comparative overcrowding of classes, facilities, and activities;
- assignment of fewer or less qualified teachers and other professional staff;
- provision of less adequate curricula and extracurricular activities or less adequate opportunities to take advantage of the available activities and services;
- provision of less adequate student services (guidance and counseling, job placement, vocational training, medical services, remedial work);
- assigning heavier teaching and other professional assignments to school staff;
- maintenance of higher pupil-teacher ratios or lower per pupil expenditures;
- provision of facilities (classrooms, libraries, laboratories, cafeterias, athletic, and extracurricular facilities), instructional equipment and supplies, and textbooks in a comparatively insufficient quantity;
- provision of buildings facilities, instructional equipment and supplies, and textbooks which, comparatively, are poorly maintained, outdated, temporary, or otherwise inadequate.

[97] The 1968 Guidelines continue the requirement that, "where there has been discrimination in professional staffing policies or practices, school systems are responsible for taking whatever positive action may be necessary to correct the effects of the discrimination." (Subpart B, Section 10).

[98] Subpart C, Section 11.

tion of school structure, school closing, school consolidation and construction, transportation, and attendance outside system of residence are briefly covered. The significance of the 1968 Guidelines lies in their applicability to the entire Nation and in the 1968–69 and 1969–70 target dates for full compliance with the law.

In large measure, the 1968 Guidelines closely adhere to the language of Title VI, the regulations, and court opinions. In May 1968, in the case of *Green* v. *County School Board of New Kent County*, the U.S. Supreme Court lent support to the 1968 Guidelines when it said, in effect, that a "freedom-of-choice" plan was not acceptable *per se* but must effectively abolish the dual school system.[99]

Scope of Compliance Review Activity Prior to Reorganization– As indicated, much of the early HEW effort with respect to school desegregation revolved around negotiations with recalcitrant school administrators and attempts to obtain acceptable plans. Compliance reviews, in the sense of monitoring the extent to which schools were actually abiding by the agreed upon desegregation plan, including ascertaining whether "free choice" plans were resulting in desegregation, were almost unknown.

During the first half of Fiscal Year 1967, 372 school compliance reviews in the area of elementary and secondary education were conducted by EEOP.[100] During the 6-month period from January 1, 1967, 270 compliance reviews were reported.[101] As has been noted on p. 16, many reviews, particularly those made dur-

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[99] *Green* v. *County School Board of New Kent County*, 391, U.S. 430 (1968). The Court stated, "a plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is intolerable." (at 438)

On July 3, 1969 the Secretary of HEW and the Attorney General issued a joint statement announcing "new, coordinated procedures, *not new 'Guidelines.'*" (Our emphasis.) Statement by the Honorable Robert H. Finch, Secretary of the Department of Health, Education, and Welfare, and the Honorable John N. Mitchell, Attorney General, July 3, 1969. Although the statement lends itself to different interpretations, the following language reflects the thrust of the new procedures:

". . . . it is not our purpose here to lay down a single arbitrary date by which the desegregation process should be completed in all districts, or to lay down a single, arbitrary system by which it should be achieved.

A policy requiring all school districts, regardless of the difficulties they face, to complete desegregation by the same terminal date is too rigid to be either workable or equitable . . . ."

This Commission expressed its concern over the possible impact of these procedures and other Administration actions in slowing down the pace of school desegregation. See Statement of U.S. Commission on Civil Rights, Sept. 12, 1969.

[100] One hundred and forty-seven schools were found to be in "compliance"; 170 "out of compliance"; 55 were listed as "still being negotiated"; 140, "noticed for hearing"; 16, "funds cut off"; and 13, "compliance achieved." (Figures supplied by OCR in response to the Commission's request in conjunction with Title VI survey.)

[101] Ninety-two were listed as "in compliance"; 138, "out of compliance"; 40, "still being negotiated"; 82, "noticed for hearing"; 35, "funds cut off"; and 15, "compliance achieved." (Figures supplied by OCR in response to the Commission's request in conjunction with Title VI survey.)

ing the summer of 1966, were conducted by persons with no experience in civil rights compliance investigations and inadequate training. And, in the early years, even the standards by which the adequacy of school desegregation plans was judged were inadequate.

Effect of OCR Reorganization on School Compliance—With the 1967 centralization of all civil rights functions in OCR, the school desegregation program was in a sense forced to compete with the hospital, welfare, and other compliance programs in HEW. The issue of priorities, however, never was in doubt. Elementary and secondary school desegregation was seen not only as the top priority; for many staff members it was the only priority.[102] A comprehensive attack on Southern school desegregation was planned. Compliance reviews of school systems were to be conducted in the field on a scheduled basis. Complaints would no longer be a primary factor in determining when and where reviews were to be made.

The 1967 centralization of civil rights functions solved a vexing problem of administering the school desegregation program. Prior to 1967, both Seeley and Libassi had been responsible for the program. This resulted in the overlapping of some spheres of OCR and EEOP activity and authority. In addition, the Assistant Commissioner had had to work through at least one higher administrative level while the head of OCR had direct access to the Secretary. The overall effectiveness of the program was heightened by the reorganization.

The decentralization of staff to the regions, which was a major component of reorganization, brought compliance officers much closer to the school districts and other recipients with which they would be working. Whatever communication problems arose between the central office and the regions, from most accounts, were more than adequately compensated for by the proximity of compliance staff to the field of operation.

Within OCR during this period, a comprehensive staff manual for elementary and secondary dual school systems was developed.[103] Although various other materials, including the *Com-*

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[102] Interviews with Derrick Bell, then Deputy Director, OCR; Barney Sellers, then Staff Assistant to Ruby Martin; and others (March and April 1968).

[103] Staff Manual-Elementary and Secondary Dual School System, OCR, February 1968 (draft). The Manual dealt with a variety of matters, including the criteria for selection of districts for review. It covered such subjects as conduct of investigations, pre-trip planning, first meeting with superintendent, school visits, community interviews, other Federal programs, final meeting with superintendents, conduct of meetings, press interviews, and follow-up. Other major subjects included enforcement, settlements, complaints, releasing information to the public, field emergencies, and districts changing status. Form letters, model evaluation reports, work sheets and sample materials involving various situations also were included.

pliance Officer's Manual,[104] had been used by the EEOP, the *OCR Staff Manual* was the first such comprehensive handbook developed for use by compliance review staff in dealing with school desegregation *per se*.

The March 1 Letters—In addition to its own priorities for accelerating school desegregation efforts, OCR was placed under an even more stringent, externally imposed deadline by the March 1 letter requirements. In late 1967, in the course of Senate debate on the Elementary and Secondary Education Act, HEW's school desegregation program came under attack from Southern opponents. One of the criticisms raised by the Southern faction was that school districts were in constant jeopardy of having funds terminated at any time during the school year. In the face of this threat, it was argued, uncertainty prevailed and educators found it difficult to plan their budgets for the school year. Regardless of the merits of this argument, the fact was that vital legislation remained tied up in debate. The impasse was finally broken with an agreement that Secretary Gardner would set forth in writing new procedures designed to provide ample forewarning to school districts which might be subject to fund termination proceedings during the ensuing year.

On December 8, 1967, Secretary Gardner wrote a letter to Senator Wayne Morse, then Chairman of the Senate Education Subcommittee, in which he committed HEW to identify, by March 1 of every year, each district which might lose Federal financial assistance during the following school year because of noncompliance.[105] The letter further stipulated that termination orders whould not become effective between September 1 and June 1 of such school year unless the school district received a warning by letter prior to March 1 and a notice of opportunity for hearing was mailed to the school no later than September 1 of the school year in which the order would be made effective. This meant that, between the time the March 1 letters were mailed and the opening of the new school year (in this instance, September 1968), an intensive compliance review effort was required.

OCR met its deadline and by September 1, 1968, each of the 317 schools which had received March 1 letters had been reviewed. Two hundred and twenty-one schools submitted acceptable plans. Eighty-one schools were noticed for hearing and the remainder fell into some type of miscellaneous category (e.g.,

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[104] *Compliance Officer's Manual* (United States Commission on Civil Rights, October 1966). *Op. cit. supra* note 13.

[105] Gardner letter to Morse, Dec. 8, 1967.

under a court order or in process of consolidation).

Southern school districts with a majority Negro pupil enrollment had been bypassed by HEW for a long time, apparently because of the special problems posed.[106] Ruby Martin, in an address to school administrators in June 1968, alluded to "special educational and administrative problems" which majority Negro districts might have in desegregating their systems.[107] Nonetheless, in August 1968, 340 additional school districts, most of which had a majority of Negro students enrolled in their schools, were put on notice to develop an acceptable "terminal plan" by September 30 or expect to receive a March 1 (1969) letter. A timetable for complete elimination of the dual systems was set forth. In general, these districts were expected to "develop comprehensive desegregation plans with *terminal dates* (emphasis added) not later than September 1969." Allowance was made for plans with a September 1970 terminal date (i.e., where new construction might be involved) but Mrs. Martin stressed that the burden of proof would be on those districts which contended that they could not meet the 1969 deadline. In her concluding remarks, she asserted,". . . it should be clearly understood that there is no reluctance to take appropriate enforcement action against any schools which continue to operate racially dual systems, whether they are majority or non-majority districts." [108]

The Northern School Effort—In December 1967, Congress adopted an amendment to the Elementary and Secondary Education Act requiring the Title VI compliance program to "be uniformly applied and enforced throughout the fifty States." [109] A few months thereafter, in April of 1968, OCR initiated its Northern schools' compliance program. Working closely with the Office of General Counsel and with the cooperation of the Department of Justice, an effort was made to investigate discrimination in some of the 20,000 school districts in Northern and Western States. Initially, a staff of about 20 persons reviewed school districts in selected Northern cities in an effort to document discriminatory practices such as gerrymandered school districts, racial assignments of pupils and teachers, lower per pupil expenditures in predominantly Negro as compared to

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[106] According to Richard Warden, then Deputy Director, OCR, "they were placed on the back burner—I think now this was a mistake." (Meeting of Virginia State Advisory Committee, Commission staff, and HEW officials, Oct. 23, 1968).

[107] Martin address at the Title IV, Title VI Conference for School Administrators with Majority Negro Student Enrollment (June 17, 1968, Atlanta, Ga.)

[108] Id. at 7.

[109] Elementary and Secondary Education Amendments of 1967; P.L. 90-247, Section 2.

predominantly white schools, and other practices which perpetuated or reinforced segregated or discriminatory schooling.[110]

Efforts were geared toward developing evidence which would sustain Title VI administrative hearings and which might furnish the basis for referral to the Department of Justice for judicial proceedings. School systems of moderate size (e.g., 50,000 enrollment) and substantial nonwhite population (e.g., 30 percent) were chosen. The complex, often subtle, and hard-to-document nature of school segregation outside the South required new investigative techniques and time consuming field work. The Northern school program was just beginning at the time the present survey was being conducted. It is too early to gauge the full scope of the program or to evaluate its potential success.[111]

It is likely that in the coming year the Northern school program will assume greater importance, primarily due to the conditions imposed during the last session of Congress. In the summer of 1968, an amendment to the HEW appropriation bill required that the same degree of school compliance effort be expended in the rest of the country as is expended in the South.[112] In a report to Congress in March of 1969, Secretary Robert H. Finch described actions taken by his Department in accordance with the Appropriation Act.[113] HEW actions reflected an equalization—North and South—of the school compliance staff assignments under Title VI and administration and enforcement of Title VI "by like methods and with equal emphasis in all States of the Union.[114]

Recent Developments—HEW's school desegregation effort,

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[110] Interview with Richard M. Shapiro, then Northern School Coordinator.

[111] On October 14, 1968, OCR, in its first such action in the North, ordered the school board in Union, N.J. to end segregation at the Jefferson elementary school (98 percent Negro).

[112] Section 410 of P.L. 90-57 (Labor-HEW Appropriation Act of 1969).

[113] *Establishing a Nationwide School Desegregation Program Under Title VI of the Civil Rights Act;* A Report to the Congress from the Honorable Robert H. Finch, Secretary of Health, Education, and Welfare, March 1, 1969.

[114] *Id.* "HEW's actions in Brief" were listed:

(1) Additional staff has been assigned to the elementary and secondary school compliance program outside the 17 Southern and border States. Totals as of March 1, 1969: North and West, 53 persons; South, 51. These figures compare with 32 persons assigned to the North and West and 67 to the South in October 1968, when the Appropriations Act was signed into law. Eleven more staff members are expected to be assigned to the compliance program outside the South within the next six weeks.

(2) Nondiscrimination provisions in the Elementary and Secondary School Compliance Policies issued by HEW in March 1968 apply to all schools in all States, including those which never had formal dual school systems as well as those which formerly were racially segregated by law. Uniform enforcement procedures are based on information received by HEW from nationwide school enrollment surveys. There have been reviews of 40 school districts in thirteen Northern and Western States. Officials in six school districts in six of these States were notified of apparent Title VI violations and two other districts were referred to the Department of Justice for possible court action.

which had been slow, halting, and frequently ineffective during the period immediately following passage of the Civil Rights Act of 1964, had been visibly accelerated by the end of 1968. As indicated, centralization of compliance functions within OCR, together with regional decentralization of enforcement efforts, all tended to improve efficiency. Uniform standards for compliance reviews, comprehensive school desegregation guidelines, and recent court decisions [115] strengthened the elementary and secondary school desegregation program. The March 1 letter requirement served to spur, rather than impede, enforcement activity.

During Libassi's tenure, Secretary Gardner provided full support for the activities of OCR. Despite his backing and despite the high calibre of leadership and determined staff efforts, progress was difficult. Resistance by opponents of school desegregation has never abated. For example, early in the fall of 1969 this Commission had occasion to express strong concern over certain Administration actions, such as taking the initiative in requesting the courts to postpone desegregation in a number of Mississippi schools until 1970. [116]

And as 1969 neared its end, there were renewed efforts in Congress to restrict Title VI enforcement by amending the HEW appropriations bill to require the Department to accept freedom-of-choice plans.

Higher Education

Prior to 1968 no compliance review program for institutions of higher education existed. A limited review operation was undertaken last year. As of April 1968, the higher education staff consisted of a coordinator assisted by one other professional on a half-time basis. Regional OCR directors had designated their education branch chiefs as regional higher education coordinators but, in practice, their time was almost completely taken up with elementary and secondary school desegregation. A total of

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[115] For example, *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968). The Court stated, "a plan that as this late date fails to provide meaningful assurance of prompt and effective disestablishment a dual system is intolerable" (at 438). Earlier the U.S. Court of Appeals for the Fifth Circuit had ruled, in *U.S.* v. *Jefferson County Board of Education*, 372 F 2d. 836 (5th Cir. 1966), *aff'd en banc*, 380 F. 2d 385 (5th Cir. 1967), that the Fourteenth Amendment imposes an affirmative duty to bring about "a bona fide unitary system where schools are not white schools or Negro schools – just schools." (at 890).

[116] For a detailed analysis see, *Federal Enforcement of School Desegregation*, U.S. Commission on Civil Rights (Sept. 11, 1969).

six field reviews of institutions of higher education was reported through April 25, 1968.[117]

Health

Hospitals were among the first recipients of Federal financial assistance to undergo compliance reviews. They were smaller, less complex, and easier targets than public school systems. Also, reviews were less likely to encounter strong community resistance or evoke Congressional ire. Discrimination in medical facilities did not involve the subtle characteristics found in certain welfare programs. Hospital discrimination was usually overt. It was difficult to conceal[118] and correspondingly easy to document.

Early compliance activity was the responsibility of the Public Health Service. The Community Health Division (CHD) of the Bureau of State Services, a component agency of PHS, was designated as the "control point for all types of grants to official state and inter-state agencies and for project grants. . . ." The same division also was charged with responsibility for maintaining and circulating a list of applicants and grantees who "provide acceptable assurances and statements."[119]

Compliance review activity throughout 1965 and the early months of 1966 tended to center around complaint investigations. Generally, these were conducted by staff temporarily detailed from one or another of the component agencies within PHS and by Assistant Secretary Quigley's immediate staff. A log was kept of hospitals which received Federal aid and against which a complaint had been made. Attempts were made to investigate these according to priority based on the order in which complaints were received by HEW. As of December 1965, nearly 100 complaints were listed as "resolved."[120] "Resolved" meant that the hospital had been taken off the complaint list and was regarded as "in compliance." Actual information about the scope and nature of compliance activity during the year following promulgation of the Title VI regulation is sparse. Reliable statistics were not kept and standards had not been developed to a

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[117] Interview with Solomon Arbeiter, Higher Education Coordinator.

[118] Although it is usually difficult to conceal segregated facilities, in at least one instance the administrator of a hospital temporarily succeeded in deceiving Federal investigators by having white and Negro staff members pose as patients and occupy beds in a semi-private room. The review team later learned of the deception and made an unannounced visit to the same hospital a few weeks later, exposing the fraud.

[119] Within CHD, the focal point for the early operations appears to have been the grants branch of which Sam Kimble was associate chief. (See memorandum from Deputy Surgeon General, PHS, to Bureau Chiefs [and] Director, National Library of Medicine, "Civil Rights Forms and Procedures" (Dec. 16, 1964)).

[120] Interview (December 1965) with Mrs. Sherry Arnstein, Special Assistant to Assistant Secretary Quigley, in conjunction with *Title VI . . . One Year After*, *Op. cit. supra*.

point which permitted an accurate determination of compliance status in each case.

Medicare—On July 30, 1965, Medicare was enacted and was scheduled to go into effect the following year. Thousands of public and private hospitals, nursing homes, and extended care facilities became potential Title VI recipients.[121] Medicare payments offered a substantial financial inducement to hospitals and other health facilities to comply with Title VI. Moreover, since most of these were new recipients which previously had not received Federal assistance, HEW was in a position to require actual compliance with Title VI, as opposed to a mere promise to comply, as a prerequisite to certification for participation in Medicare. With Secretary Gardner's full support, HEW took advantage of the opportunity provided by Medicare for achieving a further breakthrough in the field of health.

In February 1966, the Office of Equal Health Opportunity (OEHO) was established within the Public Health Service.[122] During the several months following its creation, OEHO launched a major effort to review hospitals in conjunction with certification for Medicare. Initial "reviews" were based on information furnished by the Medical Facilities Compliance Report.[123] On the basis of this information and on the basis of complaints filed with HEW, OEHO established priorities for investigating approximately one-third of the estimated 9,000 hospitals in the country which were potential recipients for Medicare funds. During the spring and early summer of 1966, a "crash" effort was made to train hospital compliance officers. OEHO's limited staff was augmented by staff from PHS and the Social Security Administration (SSA) to conduct compliance reviews. In February 1966, OEHO consisted of exactly five permanent staff members. Two months later OEHO had grown to 14 but the compliance operation had expanded to more than 200 including 30 consultants and 165 persons on temporary detail. By July, almost 500 persons were engaged in the hospital compliance program. The

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[121] Prior to Medicare, comparatively few hospitals were receiving significant amounts of Federal aid. The major source of funds, the Hill-Burton construction program, affected about 500–600 hospitals each year (about 6 percent of the total subsequently covered by Medicare). Funds for training and specialized research were relatively minor. Although many hospitals served as vendors (see definition at p. 52 infra.) to federally assisted welfare agencies, the difficulty in getting the State agency to monitor compliance on the part of the vendors was enormous.

[122] See Statement by Surgeon General William H. Stewart (Mar. 7, 1966). Robert M. Nash was subsequently named as Chief of the program and continued in that capacity until late in 1967 when the reorganization of OCR took place.

[123] Medical Facilities Compliance Report (Civil Rights Act, Title VI), PHS–4867 (February 1966).

bulk of the compliance review staff consisted of temporary summer employees and staff on detail from PHS regional offices and SSA central and regional offices.

The OEHO compliance program probably is the most successful large scale Title VI effort that has been made to date. By June 30, 1966, more than 2,700 compliance reviews had been conducted by field staff and had been reviewed by regional and Washington Title VI staff.[124] Of this total 1,329 were successfully brought into compliance in the course of the negotiations. The compliance review program was in high gear by midsummer of 1966. In the 6-month period beginning July 1, 1966, a total of 4,142 compliance reviews was conducted. Of that number 2,267 hospitals were found to be in compliance at the time of investigation; 1,875 were found to be in noncompliance. As 1966 came to a close, negotiations were still being conducted with 510 hospitals. Thirty-six hospitals had been noticed for hearings.[125]

During the 6-month period beginning January 1, 1967 (the period just prior to the OCR reorganization), compliance review activity declined sharply. During this period, 392 reviews were reported. The majority of hospitals either were found to be in compliance or came into compliance after further negotiations. As of June 30, 1967, a total of six hospitals had had funds terminated and another seven had been noticed for hearing.

Extended Care Facilities—A second aspect of OEHO's compliance program concerned the estimated 15,000 extended care facilities (ECF's)[126] which are covered by Title VI. Extended care facilities never were subject to the kind of review which characterized the hospital compliance program. Undoubtedly a number of factors account for this. For one thing, the pressure to certify hospitals for Medicare by July 1966 (or shortly thereafter), which had lent such great impetus to OEHO efforts, was now over. With the intensive investigation phase of the health compliance operation out of the way, HEW's attention shifted more squarely to problems of school compliance. Medical students and others who were hired to work during the summer of

[124] The bulk of these reviews came in the 3 months prior to June 30, 1966. However, some reviews took place prior to the spring of 1966 including perhaps a few conducted during 1965. Exact figures are not available.

[125] As of Dec. 31, 1966, no hospitals were listed as having had funds cut off.

[126] As defined in the "Guidelines for Compliance of Extended Care Facilities with Title VI of the Civil Rights Act of 1964," (April 1966), extended care facilities mean "institutions (or a distinct part of institutions) which have transfer agreements with one or more qualified hospitals having agreements with the Secretary of HEW." In practice, ECF's primarily are licensed nursing homes and similar settings which provide 24-hour care for chronically ill and other types of patients.

1966 no longer were available. The 300 staff members who had been temporarily detailed from Social Security returned to their primary duties. The few dozen consultants who assisted with the operation in the spring of 1966 could not be retained indefinitely. By the fall of 1966, the OEHO was back to a 30-man operation.

The shift in emphasis and the reduction of staff assigned to the health compliance field prompted the Chief of the Health and Welfare Division of the Bureau of the Budget, Irving J. Lewis, to write to Libassi in October 1966 to express his concern with the plan to "reduce substantially the PHS resources dedicated to the Nursing Home Compliance Program." [127] Lewis expressed doubt about the plan to assign responsibility for supervising Title VI compliance for nursing homes not participating in Medicare to the Welfare Administration. He pointed out that the Welfare Administration would rely on State agencies to investigate, inspect, and clear skilled nursing homes.[128] He also questioned the plan to limit compliance reviews to a sampling of these facilities based primarily on information received in the ECF Compliance Report. Despite questions from the Bureau of the Budget, compliance activity with respect to health facilities in 1967 was reminiscent of departmental activity 2 years earlier in terms of renewed emphasis on paper compliance [ECF report forms] and in terms of a compliance review program directed more to complaint investigations than to regular field reviews.

Although compliance activity in the health area declined steadily after 1966, the overall picture during Libassi's tenure is impressive. In a memorandum summarizing OCR's accomplishments in the 2-year period following creation of the Office, Derrick Bell stated, in part, ". . . field investigations were conducted in an estimated 4,000 hospitals and 640 extended care facilities. Fifteen thousand compliance reports were reviewed. Compliance procedures resulted in 7,400 hospitals and 6,300 extended care facilities being cleared for participation in Medicare. More than 97 percent of all hospitals in the Nation were officially committed to nondiscriminatory provision of services as of January 1, 1968. Of this total, more than 3,000 changed

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[127] See memorandum from Irving J. Lewis to F. Peter Libassi, "Title VI Compliance Program for Hospitals and Nursing Homes" (October 4, 1966).

[128] With respect to State agency responsibility, Lewis noted, ". . . It raises the question of whether it is appropriate for a State agency to be given responsibility for carrying out a Federal function and whether the State agency can make the objective and independent judgments with regard to Civil Rights Compliance required under Title VI." (Compare comments below with regard to the State agency review program.)

previous policy and practices to comply with Title VI. As of January 1968, only 12 hospitals had lost Federal funds because of failure to comply with Title VI."[129]

Current Situation—With the 1967 reorganization, responsibilities previously carried out by OEHO were reassigned. Health branches were established within the Operations Division and within the Program Planning and Development Division.[130] The health branches were short-lived and, by March 1968, had been merged into a combined Health and Welfare Branch within the Operations Division. The merger was especially significant in that it reflected the decision to encompass almost all compliance review activities in the health field within the newly established State agency review program.[131] Currently, although investigations are made of specific complaints, there is no routine compliance review program for hospitals and other health facilities except to the extent that these are included in the course of State agency reviews.

Most of the Nation's hospitals, including the 3,000 which only a few years ago openly practiced discrimination,[132] have not been reviewed for compliance with Title VI since 1966. Perhaps the changes which came about in the course of the "crash" Medicare certification program have lasted. However, in the absence of periodic compliance reviews or, at a minimum, a follow-up study, it would be premature to assume that medical facilities have attained complete and lasting compliance with Title VI. Since most extended care facilities and nursing homes also have never been subject to field review, their current status with respect to Title VI can only be a matter of conjecture.

Welfare

The term "welfare" covers a variety of HEW public assistance programs. including programs which formerly came under the Welfare Administration and the Vocational Rehabilitation Administration.[133] For two reasons, there will be no attempt to analyze the several components of "welfare" separately. First, OCR, at least since its reorganization, has viewed compliance activity as falling into only three areas—education, health, and "wel-

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[129] See memorandum of Jan. 1, 1968 from Derrick Bell, then Acting Director, OCR, to Executive Officer, Office of the Secretary, "Fiscal Year 1969 Congressional Budget Justification."

[130] The Program Planning and Development health branch never became operational.

[131] See pp. 87–89 below.

[132] Bell memorandum.

[133] Vocational Rehabilitation Programs presently serve an estimated 200,000 beneficiaries each year. This total represents only a small fraction of 1 percent of those affected by health and educational programs.

fare." Second, what once comprised the Welfare Administration has since been reorganized under the umbrella of the Social and Rehabilitation Service.

Compliance activities in welfare programs have always been accorded low priority. For one thing, many of the inequities in welfare programs are of a more subtle institutional nature—often difficult to identify, still more difficult to remedy, and in many cases not even subject to Title VI procedures. Policy and procedural considerations also have played a large role in the lack of emphasis on compliance activities in this area. The billions of Federal dollars which support public assistance all flow through continuing programs administered by the State in contrast to many educational and health programs in which Federal funds go directly to local recipients such as school districts and hospitals. Welfare is unlike education in that, with education, attention can be focused on a specific school system and compliance action of a limited, sharply focused nature can be taken.[134] It is unlike health programs, where reviews of particular hospitals and health facilities can be conducted in a short space of time by a two-man team and enforcement action can be brought against a single local recipient.

Welfare programs operate through State agencies—the State itself is the recipient. According to HEW, there is no way to particularize the program—to move against one part of the system or to pinpoint fund cutoffs.[135] The time consuming nature of comprehensive State agency reviews of the sort necessary to sustain a case for terminating funds, the protracted negotiations and hearing process which must precede any final action,[136] and the political repercussions attendant upon the efforts of a Federal agency to cut off a multi-million dollar program from an entire State are enormous. These are the major factors which have led OCR to relegate compliance activities with respect to welfare programs to a minor place in its total Title VI enforcement operation.

In a sense, HEW deals from a position of weakness when it comes to full compliance with Title VI in the various State ad-

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[134] However, in the area of education, particularly higher education, consideration has been given to reviewing the entire State educational agency. This, in fact, may be the only feasible approach to some State administered dual systems of higher education. (Arbeiter interview, Apr. 1968).

[135] There is a difference of legal opinion on this point. The prevailing view and that of HEW's Office of General Counsel is reflected in the text. But see "Title VI of the Civil Rights Act of 1964—Implementation and Impact," (George Washington Law Review, May 1968, pp. 976–979.)

[136] Secretary Gardner's decision on Alabama's refusal to comply with the Title VI regulations was not handed down until 1967, after many months of administrative proceedings and more than 2 years after the regulations had been promulgated.

ministered welfare programs. The only real weapon at its disposal is too large, too total for practical use. Some have argued that if it were used once—if an example were made—the threat of future use would be a sufficient deterrent to noncompliance. Others, equally concerned about Title VI violations in these programs, disagree. This group argues that the problem is rarely one of gross, blatant, easily documented discrimination such as exists in the case of elementary and secondary schools, hospitals, and health facilities. It contends it is most unlikely that substantial widespread discrimination can be documented today in any State administered continuing welfare program. It doubts that any court would sustain the massive cutoff of Federal aid to a State program so long as it was substantially in compliance. This group argues that, if its assessment of the probable outcome of a court test is correct, it is better not to take the risk. Once the courts sanction "substantial compliance," States that are being held to "full compliance" will have a convenient out and whatever leverage HEW now has would be lost altogether.[137]

Although it may be a challenging exercise to debate the pros and cons of Title VI strategy with regard to continuing State welfare programs, the fact is that Title VI has not proven to be an effective weapon in these cases. There is an urgent need for developing different approaches, perhaps including new legislative and legal weapons, if inequities are to be eliminated.

Reflecting the considerations discussed above, compliance activities in the area of welfare have been minimal. By early 1968, reviews had been made of State practices in only seven States. Most of these were conducted by teams composed of Title VI and program staff from the Washington and regional offices and State personnel. They were, with the exception discussed below, of limited scope. For the most part, they concentrated on procedures and involved discussions with State directors and members of their staffs.

Mississippi Review—June 1966—During a 3-week period, from June 8, 1966, 18 staff members from the Welfare Administration conducted a field review of public assistance and child welfare services in the State of Mississippi. The review was partly in response to complaints of continuing discrimination in Mississippi's

[137] See for example testimony given during Jackson, Mississippi meeting on welfare problems convened by the Mississippi State Advisory Committee to the U.S. Commission on Civil Rights (February 1967). Some of the viewpoints presented in the text also were expressed at subsequent meetings with HEW officials, State Advisory Committee members, Commission staff, and others during the spring of 1967 as part of the Commission's follow-up to the Jackson meeting.

programs and partly in response to pressures from various private civil rights groups and the Commission on Civil Rights to move beyond earlier efforts which had been devised solely for the purpose of achieving paper compliance. It also was a test of the feasibility of conducting State agency reviews. HEW sought to assess the problems inherent in an investigation of this scope, including the time, staff, and money which would have to be invested and the amount of training and preparation involved. The value of such a review, in appraising the extent of noncompliance and in spurring the States to greater efforts, could then be measured against its difficulties and costs.

In the course of the review, more than 150 individuals, including representatives of community relations and civil rights groups, were interviewed regarding equality of treatment afforded clients and applicants through public welfare programs. Administrative practices of the State agency were analyzed and 10 of the 84 counties in the State were visited. The review included analyses of complaints and statistical data on recipient rates, levels of assistance payments, hospital utilization rates, and foster home care boarding rates. A statistical sample also was taken of 240 cases [120 white and 120 Negro] involving applicants who had been denied public assistance or for whom assistance recently had been terminated. Interviews were conducted in all of these cases (in addition to the 150 individual interviews referred to above) regarding the basis and circumstances of the action to deny or discontinue assistance. Reviews were made of a random sample of 96 active cases involving child welfare services. Day care facilities, which had signed compliance statements and which were used by the State welfare department, were visited and staff was interviewed.

Despite the fact that staff members of the USCCR urged that the scope of the review be broadened and that more cases be reviewed, several crucial areas of service were not covered. These included employment practices, the surplus food distribution program, and compliance of hospitals used by State agencies. Regarding these omissions, the Welfare Administration explained that staff employment was covered under the Federal Merit System requirements;[138] the Department of

[138] A recent Commission on Civil Rights study of State and local government employment found that the Office of State Merit Systems, the Federal agency responsible for monitoring these requirements, does nothing to enforce the nondiscrimination provisions of the merit system regulations. See, *For All the People . . . By All the People, A Report on Equal Opportunity in State and Local Government Employment*. (U.S. Commission on Civil Rights 1969).

Agriculture had primary responsibility for determining Title VI compliance in the food distribution program; and hospital compliance in Mississippi was being determined by PHS at the time the Stage agency review was undertaken.

In December 1966, a summary of the review emerged—6 months after field work was completed.[139] The findings and conclusions of the compliance review never were issued officially and the report itself was not published. A letter was prepared for the signature of Ellen Winston, then U.S. Welfare Commissioner, which was to be sent to the Mississippi Commissioner of Public Welfare. The letter reflected the theme that civil rights compliance in public welfare programs in Mississippi had to be viewed within the context of the cultural and economic setting within which the program was administered. The Winston letter concluded that, seen within this framework, Mississippi was substantially in compliance with Title VI despite some evidence of discrimination.

The summary of findings and conclusions, however, did not fully reflect the extent of discrimination described in the body of the report. Moreover, staff members from the Welfare Administration who participated in the field review subsequently confided that the report itself did not even contain all of the findings of discrimination uncovered by field investigators.

Opposition on the part of civil rights staff within HEW to issuance of the report and particularly to Dr. Winston's covering letter was intense. As a result, the report was filed away. In response to inquiries, it was explained that "more work was needed." The issue of the Mississippi welfare review was raised by staff members of the Commission on Civil Rights in March 1967 in the course of follow-up work on a Jackson, Mississippi welfare meeting which had been held by the Commission's Mississippi State Advisory Committee a month earlier. Again, HEW officials indicated that further work was needed before the report could be issued and before firm conclusions could be drawn regarding compliance within Mississippi welfare programs. HEW also advised the Commission that the findings of its June 1966 review were now out of date. Changes had taken place and were still taking place within the State. Moreover, a full-time civil rights investigator was assigned to the Atlanta office and was detailed

[139] Summary of June 1966, "Review of Public Welfare Practices in Mississippi" (December 1966), unpublished report of the Welfare Administration.

for several weeks to concentrate entirely on Mississippi. It was felt that the most promising vehicle for achieving compliance was the continued "Federal presence" in the State. Toward this end, frequent review, onsite investigations, meetings, visits, and discussions with State and local officials by Federal officials from the Washington and the regional offices would have the greatest impact. It was apparent that Welfare Administration officials had come to the conclusion that withholding funds was not a realistic approach to obtaining Title VI compliance in State administered welfare programs.[140]

State Agency Reviews– In March 1968, enforcement activities in the area of welfare and health were brought together in a combined Health and Welfare Branch within OCR's Operations Division. Louis H. Rives, then Chief of the Welfare Branch, was named to head the new unit.[141]

In an attempt to rectify the lack of compliance efforts in welfare and other State administered continuing programs and to examine the compliance status of "vendors",[142] to review compliance in hospitals and health facilities, and to obtain maximum mileage out of minimal staff, the State agency review program was initiated in April 1968. The program is an ambitious one and on its outcome may rest the success of HEW Title VI compliance efforts in all areas other than education.[143]

The purposes of the State agency review program as set forth by OCR are:

> (1) to strengthen actual performance in the State and to find more effective ways to eliminate all forms of discrimination on the basis of race, color, or national origin in programs assisted through Federal funds; (2) to give assistance and training to State personnel in evaluating compliance, on a continuing basis, within the State and local agencies administering programs assisted through Federal funds as well as by vendors in the respective programs; (3) to provide technical assistance and advice to the States on carrying out their responsibilities with respect to compliance with

[140] See for example the testimony of Fred H. Steininger, former Director, Bureau of Family Services, at the February 1967 Jackson welfare meeting.

[141] Rives is currently Director of the Operations Division.

[142] E.g., doctors to whom welfare agencies refer patients for which the agency pays. The Title VI regulations do not define the term, "vendor," although it is widely used. The *Compliance Officer's Manual*, at p. 3, states: "'Vendor' refers to an individual, group, public, or private organization or institution, political entity, or commercial enterprise which, pursuant to any contract, agreement, or other arrangement with a recipient, furnishes a service which is used by or available to a beneficiary of the program."

[143] Even here consideration has been given to State agency reviews of State departments of education and higher education. (Rives interview.)

Title VI of the Civil Rights Act; and (4) to identify any specific areas where the State agency is not in compliance with Title VI and formulate steps to be taken to correct such noncompliance.[144]

The reviews cover the activities of State agency headquarters and local and regional offices of State agencies. They also involve field visits to a sampling of urban and rural localities and onsite reviews of selected facilities such as hospitals, nursing homes, children's institutions, day care centers, and vocational rehabilitation workshops.

Reviews are conducted by teams composed of HEW civil rights staff, program managers from the Washington and regional offices, and State agency personnel. Prior to the initial reviews in each region, a period of training and orientation is conducted for all Federal personnel embarking on State agency reviews for the first time. There also is a brief orientation for State agency personnel but the theory is that this group will learn through actually participating in the field reviews. The theory also assumes that the approach, requirements, and expectations—in short, the example set by the Federal officials—will "rub off" on the State people. The hope is that eventually State agency staff, on their own or with a minimum of Federal assistance, will be able to conduct regular and adequate compliance reviews.

Closely linked to the idea of having State agency personnel monitor their own programs is the concept that equal opportunity must be built into the program. Unless State people see this as an intrinsic part of their responsibilities, compliance activities by Federal officials will have little value because the inequities in service in continuing State programs are often subtle, hard to document, and harder still to remedy except by those working in the program on a day-to-day basis.[145]

Recent Developments—During the calendar year 1968, field work was completed on 17 State agency reviews. A total of 1,500 facilities and agencies was visited. Final reports were completed on four States—Maryland, Florida, Arkansas, and Connecticut—by the end of 1968. A fifth report, on South Carolina, was completed in January 1969. State agency reviews are scheduled to be completed for the rest of the country by January 1970.

[144] Preliminary draft of "Plan for Conducting Reviews of State Agencies' Compliance with Title VI of the Civil Rights Act," HEW–OCR, p. 2. The "preliminary draft," which is undated, was still in use as of February 1969. The Plan is an elaborate package of instructions, questionnaires, and interview guides including a "Local Agency Review Guide" and a "State Agency Review Guide."

[145] Rives interview.

After the reports of the State agency reviews are written, copies are sent to the State agency together with recommendations and guidelines. Each State agency is then required to report back to OCR on remedial steps which it has taken.[146] Rives hopes to have sufficient OCR staff to enable him to assign one person to work continuously with each State. As of this writing there are 50 to 53 professionals in the Health and Welfare Branch in Washington and in the regional offices.[147]

ENFORCEMENT PROCEEDINGS—CIVIL RIGHTS DIVISION OF THE OFFICE OF GENERAL COUNSEL

Enforcement proceedings are the responsibility of the Civil Rights Division of HEW's Office of General Counsel. The Civil Rights Division in FY '69 had 33 authorized positions which included about 20 attorneys. Among their primary functions is the preparation and the conduct of hearings pursuant to Section 602 of the Civil Rights Act. Information supplied by HEW last April reveals the following activity: [148]

Number of recipients that had been noticed for hearing to date:

506	school districts
47	hospitals
1	State welfare department [149]
2	State health institutions
Total 556	

Of the 556 total, a final order terminating Federal aid was in effect with respect to 196 former recipients. Regarding the remaining 360, a breakdown of the number of hearings in process showed:

39	Noticed, but not yet heard
14	Heard, but no initial decision rendered
83	Initial decisions (last action taken)
33	Pending agency review of initial decisions
191	Terminated orders sent to Congressional Committee (of these 66 have returned to compliance)
Total 360	

[146] As of this writing the first group of reports has been returned to the States. Apparently, there is no firm timetable for response and/or remedial action by the States.

[147] OCR is requesting 30 more professional positions for the Health and Welfare Branch in its 1970 budget.

[148] Letter from Albert T. Hamlin, then Acting Assistant General Counsel, to Robert Cohen, U.S.C.C.R. staff member (Apr. 3, 1969).

[149] The Alabama welfare hearing, the only such action in the welfare area, has been described earlier.

At that time there was a backlog of more than 100 cases awaiting some type of OGC action.[150]

The Civil Rights Division of OGC is involved at many stages of the enforcement proceedings. As a general rule, OCR staff conducts the compliance review and, where necessary, writes a report recommending that the appropriate steps be taken to terminate Federal assistance to the noncomplying recipient. This, of course, follows the usual period of negotiation as required by law. The recommendations for enforcement action are reviewed by OCR Washington staff before being sent on to the Civil Rights Division (with a summary of the case also submitted to the Department of Justice for review). After the staff recommendation that enforcement action be initiated has been approved (and the Department of Justice has not raised a question or objection within 7 days) a notice of opportunity for hearing is issued and the district (in the case of schools) is informed that approval of applications for Federal funds for new activity or programs will be deferred for not more than 90 days pending the completion of the administrative hearing process. The actual proceeding is heard by an examiner designated by the Civil Service Commission pursuant to the Administrative Procedures Act. The decision by the hearing examiner to terminate Federal funds is final unless appealed to the review tribunal [151] appointed by the Secretary pursuant to the revised Title VI regulation. The decision of the review tribunal is final unless the Secretary agrees to review the proceedings.[152] The Secretary transmits a report of the final decision of the review tribunal or the hearing examiner to the appropriate Congressional committees and, 30 days after this report is delivered, the order terminating Federal funds takes effect.

In addition to its responsibilities with respect to the prepara-

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[150] Telephone discussion with Robert Brown, Assistant Director, OCR. (March 1969).

[151] The review tribunal which originally was a three-man body was expanded to five members in May 1969. 34 Fed. Reg. 7390 (May 7, 1969).

[152] During the 21-month period from October 1967 through June 1969, 108 initial hearing examiners' decisions were rendered in school cases. Noncompliance was found in 93 cases, compliance in 15. Of the 93 findings of noncompliance, 67 were appealed to the review tribunal. In no case has the appeal been sustained. In 41 instances the hearing examiner's decision was upheld, in four situations OCR and the school district reached an agreement before the tribunal acted, and in three cases the hearing examiner's decision was remanded on technical grounds. As of Aug. 6, 1969, no action had been taken on the remaining 19 cases.

Of the 15 findings of compliance, the Civil Rights Division of the Office of General Counsel appealed 13. In one instance the hearing examiner's decision of compliance was sustained and in two cases it was reversed. In one case the decision was remanded to the hearing examiner because of an error in law and in one situation agreement was reached before the tribunal acted. As of Aug. 6, 1969 no action had been taken on the remaining eight cases.

tion and conduct of hearings, appeals, and related enforcement procedures, the Civil Rights Division of OGC also serves as counsel to OCR with respect to questions of interpretation, scope, and applicability of civil rights laws, regulations, and related legal matters concerning the operation of OCR.

ROLE OF THE OPERATING AGENCIES

Prior to the centralization of civil rights functions within OCR in 1967, each of the operating agencies was responsible for its own compliance program. Consequently, the impact of Title VI was felt more keenly by these agencies—the Office of Education, the Public Health Service, and the Welfare Administration—than following the 1967 reorganization. Despite the centralization of civil rights compliance functions within OCR, the operating agencies continued to play a key role in assuring that their programs serve to promote equality of opportunity.

In large measure the success of the compliance effort is contingent upon the commitment of the program administrator to its attainment. His sensitivity to the subtle, as well as overt, forms that discrimination can take and his willingness to adopt the steps necessary to overcome the effects of past discrimination, can be central to assuring that his program results in equal opportunity in fact as well as in legal theory. Of like importance, his recognition of the integral relationship between the goals of civil rights and those of his own program can be a determining factor in achieving the spirit as well as the letter of Title VI.

HEW program administrators frequently have played a vital role in furthering equal opportunity objectives. One way in which they have done this is through public expressions of support for the goals of Title VI and by stressing the high priority they assign to civil rights among their department or agency activities.[153]

Beyond the matter of public utterances, the actions of some HEW program administrators have reflected a keen sensitivity to equal opportunity problems and a willingness to take the steps necessary to meet them. For example, during the Poor People's Campaign in the spring of 1968, which brought thousands of the Nation's poor to Washington, D.C., Stephen P. Simonds, then Commissioner of the Assistance Payments

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[153] See, for example, memorandum from Secretary Gardner to agency heads, "Civil Rights Compliance Procedures" (Aug. 15, 1966); see also Statement by William H. Stewart, M.D., Surgeon General, Public Health Service (Mar. 7, 1966).

Administration of the Social and Rehabilitation Service, sent a memorandum to all State welfare agencies calling attention to Federal requirements regarding continuation of assistance to persons temporarily absent from the State.[154] The memorandum specified that for persons participating in the Poor People's Campaign who were unable to furnish a mailing address, checks were to be sent to the recipient in care of the Southern Christian Leadership Conference, Poor People's Campaign, in Washington, D.C.[155]

In June 1968, Mary Switzer, Administrator of the Social and Rehabilitation Service, directed a letter to all State administrators on the subject of "Courteous Treatment of Clientele." The strongly worded directive dealt with the frequent complaints of failure to use courtesy titles by staff of some State agencies in addressing certain applicants, recipients, and others dealing with the agency. The letter stated that State and local agencies would be "held responsible for these offenses wherever they occur." [156] The letter went on to require every agency to take "positive steps without delay as part of proper and efficient administration, sound practice, and compliance with Title VI of the Civil Rights Act." [157]

HEW's Office of General Counsel (OGC) also has played an affirmative role in furthering the cause of equal opportunity. OGC was involved in the early 1960's in the Louisiana "suitable home" controversy and lent support to the "Flemming Ruling," [158] which, in effect, prevented Louisiana from cutting off thousands of needy black families from the federally assisted ADC program. The concepts of equitable treatment in public assistance programs were subsequently expanded in legal memoranda dealing with other issues of "conformity" under the Social Security Act.[159]

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[154] State letter No. 1037 from Stephen P. Simonds, Commissioner, Assistance Payments Administration, to State agencies administering approved public assistance plans, "Forwarding of assistance payments for participants in the Poor People's Campaign (May 25, 1968).

[155] Ibid.

[156] Letter, Mary E. Switzer, Administrator, Social and Rehabilitation Service, to State Administrators, "Courteous Treatment of Clientele" (June 17, 1968).

[157] Ibid.

[158] On Jan. 17, 1961, Secretary of HEW, Arthur F. Flemming, stated at a news conference: "Effective July 1, 1961, a State plan . . . may not impose an eligibility condition that would deny assistance with respect to a needy child on the basis that the home conditions in which the child lives are unsuitable, while the child continues to reside in the home. Assistance will therefore be continued during the time efforts are being made either to improve the home conditions or to make arrangements for the child elsewhere."

[159] For example, the equitable treatment principle was expounded and further developed by a young staff attorney, Mrs. Frances White, in a paper ("Welfare's Condition X" Yale Law Journal, Vol. 76 No. 6, May 1967, p. 1222) which helped furnish support for subsequent actions to amend the Handbook of Public Assistance Administration to assure fairer treatment of welfare recipients. Only a few years earlier, such amendments would have been deemed to be outside the sphere of Federal regulations.

Prior to passage of the Civil Rights Act of 1964, legal proceedings were undertaken, largely under the guidance of Edwin Yourman, then Assistant General Counsel for Welfare and Education, now Assistant General Counsel for Civil Rights, to prohibit discrimination in the impacted areas program. With assistance from staff of the General Counsel's office, a major conference on extension of legal services to the poor was conducted in the fall of 1964 which, in turn, gave impetus to the legal services movement.

These are only a few examples of the kinds of affirmative actions which have been taken and the vital role which administrative officials have played in furthering equal opportunity objectives. Undoubtedly, there have been numerous opportunities to further civil rights goals which have not been utilized by HEW's administrators. It would appear that, whether Title VI compliance resides in the operating agencies or in a centralized Office for Civil Rights, the way in which key administrators construe their responsibilities and choose to exercise them are crucial factors in determining whether federally assisted programs will reach and serve nonwhite Americans.

CHAPTER VI

PROGRAM EVALUATION AND DATA COLLECTION

Basic to successful Title VI enforcement is the development of methods by which agencies can systematically determine the extent to which minority group members are participating in the benefits of federally assisted programs. For this determination to be made with any degree of accuracy, agencies must collect sufficiently detailed data to be in a position to evaluate the impact of their programs and to make such changes in the programs or in their administration to assure equitable distribution of benefits. Another essential ingredient is the establishment of an effective link between civil rights staff and program administrators to assure that the two do not operate in isolation from one another. Unless both these elements are present, there is considerable danger that Title VI enforcement will result in a triumph of form over substance. In neither area, however, has the HEW effort yet proved entirely successful.

ROLE OF PROGRAM PLANNING AND DEVELOPMENT DIVISION

With the 1967 reorganization of OCR, a Program Planning and Development (PPD) Division was created with the purpose of establishing and maintaining "effective liaison with HEW operating agencies, professional organizations, and grantee groups to insure consideration of their interest in the development of policy, operational plans, civil rights training, and Affirmative Action Programs" and "design data collection systems to help determine program objectives and progress."[160] These theoretical functions were in addition to various responsibilities relating to data collection and analysis of statistical data on OCR compliance activity.

In practice, the PPD Division was small and its role in the

[160] Draft outline of staffing plans, organizational structure and principal functions (OCR-Mar. 20, 1968).

life of OCR was overshadowed by the Operations Division. The Data Analysis Branch, the major component of the PPD Division, was occupied fully with analyzing compliance reports—primarily elementary and secondary schools—and identifying the necessary priorities for field reviews. Interviews with staff from the Program Planning and Development Division revealed no significant contact with the Department's Planning and Evaluation Unit [161] and little, if any, liaison with the operating agencies of a sort that would have impact on the operation of departmental programs.

The idea of having a unit within OCR which would be in a position to plan and evaluate compliance activities and program administration was unique. To the extent that PPD might have bridged the gap between OCR and the operating agencies—one of the potential weaknesses in the centralization of compliance functions—its value would have been substantial. However, PPD remained a stepchild within OCR, at least with respect to allocation of staff resources. Whether the PPD Division could have had an impact on the operating agencies, despite its lack of line authority, is a matter for conjecture. However, lacking staff, status, and time within which to demonstrate its worth, the impact of the PPD Division on the operating agencies has proved negligible.

An essential element in program evaluation, from the standpoint of impact on minority groups, is the collection and analysis of racial data on a regular basis. However, except as called for on compliance report forms, there has been little systematic gathering of racial data by HEW's operating agencies. This is not to say that information by race is unavailable. A variety of vital statistics concerning such matters as birth rates, infant mortality, life expectancy, and death rates has been regularly gathered by the Public Health Services' National Center for Health Statistics. Various individual studies and research projects conducted by the Social and Rehabilitation Service and the Office of Education provide selective information on programs and program impact by race. The Office of Research and Statistics of the Social Security Administration has compiled information on poverty and family income by race. The Childrens' Bureau, the Vocational Rehabilitation Administration, and

[161] Although HEW has had, for more than 3 years, an Assistant Secretary for Planning and Evaluation within whose office a planning-programming-and budgeting system is being developed, its impact on the Office for Civil Rights and on the daily lives of beneficiaries of HEW's Title VI programs, has been negligible.

other operating agencies have conducted studies and compiled different kinds of information which included racial breakdowns. Certain kinds of data are available on a State or nationwide basis by race. However, there is no regular, systematic collection of racial data of the sort that would enable a researcher, a program evaluator, or a civil rights compliance reviewer to ascertain utilization by race for any given program at any given time.[162] Moreover, much of the racial data that are available are of limited value. Frequently, racial breakdowns are simply in terms of "white" and "nonwhite." Often the figures are on such a large scale (e.g., statewide) as to be useless for pinpointing areas where the problems are most severe or for focusing compliance activity on a county, city, or a metropolitan area. Finally, some of the gross data that are available actually mask inequities which a differential breakdown would reveal.[163]

The Commission on Civil Rights in the past has been critical of HEW's failure to develop adequate procedures for collecting racial data. On February 14, 1966, in a letter to Ellen Winston, the Commission expressed concern with the lack of adequate data by which to measure the impact of welfare programs on recipients by race.[164]

Dr. Winston replied April 26, 1966, indicating that the Welfare Administration "had already undertaken reviews of several . . . statistical reporting systems to determine changes needed in order that they would be more responsive to a number of major changes in our program, especially those resulting from major legislation enacted within the past two years." Dr. Winston went on to say that the Department was in the process of "installing

[162] Even compliance report forms generally fail in this respect. For example, an elementary and secondary school report might reveal that a former dual school system has become "integrated" (in terms of numbers of white and black students in joint attendance) but would not disclose track systems or extent of participation by whites and blacks in extracurricular activities, utilization of special facilities, enriched programs, etc.

[163] A common example is found in certain employment statistics which may show a substantial percentage of minority employees within a particular unit, program, or agency but which will not reveal, in the absence of further analysis, the fact that the higher salaried positions are disproportionately occupied by whites while the bulk of nonwhites are grouped in the lowest job categories. (See for example, "Study of Minority Group Employment in the Federal Government 1967," U.S. Civil Service Commission.)

[164] The Commission's letter stated in part: "In our judgment, Title VI places upon the administrator of a program of Federal financial assistance a special obligation to be informed about the current impact of the program on the recipients, by race or color. Two closely related propositions flow from this premise. The first proposition has to do with the organization of the agency's program reporting system, with its capability for delivering to the administrator at timely intervals and in an appropriate form and detail, the statistical data for showing the racial impact of the program. The second proposition has to do with the management of the body of program statistics as a tool for discovering and for forwarding the extent of compliance with Title VI." (Letter from Walter B. Lewis, Director, Federal Programs Division, U.S. Commission on Civil Rights, to Ellen B. Winston, U.S. Commissioner of Welfare, Feb. 14, 1966.)

a new system of planning, programming, and budgeting to improve the decision making process in regard to program objectives, emphases, and rates of growth." [165]

In the spring of 1966, there was a further exchange of correspondence between the Commission and HEW on the matter of racial data collection. On May 6, 1966, the Commission wrote to Libassi regarding a proposed Vocational Rehabilitation Administration form for collection of program statistics from State agencies designed to measure the progress of the program and to evaluate its effectiveness. In the proposed form, identification by race of program participants was made optional. The May 6 letter stated, in part, "a reporting system which fails systematically to secure the racial identification of program participants does not meet this requirement (i.e., the responsibility imposed by Title VI on the operating agencies to secure accurate information regarding the extent of minority participation in the program)." [166] On May 13, 1966, Louis Rives, then Special Assistant to the Commissioner for Civil Rights (Vocational Rehabilitation), sent the following brief memorandum to Libassi regarding the Commission's letter of May 6: [167]

> We agree with [the] recommendation that the gathering of racial information is extremely valuable in determining the extent to which and the manner in which minority groups are being served under the vocational rehabilitation program. We are therefore making the reporting of information as to race a requirement, except to the extent that it is specifically prohibited by State law.

The issue of systematic collection and analysis of racial data on HEW programs is still unresolved. Last year, however, HEW moved with greater firmness. In mid-January of 1969, Alice M. Rivlin, then Assistant Secretary for Planning and Evaluation, and Ruby Martin sent a memorandum to Secretary Cohen on "Equal Opportunity Goal Setting" recommending, among other things, that he "promulgate a Departmental policy on the collection of racial data." [168] The outgoing Secretary, in

[165] Letter from Ellen B. Winston to Walter B. Lewis (Apr. 26, 1966).
[166] Letter from Walter B. Lewis to F. P. Libassi (May 5, 1966).
[167] Memorandum from Louis Rives to F. P. Libassi (May 13, 1966).
[168] See memorandum from Alice M. Rivlin, Assistant Secretary for Planning and Evaluation, and Ruby G. Martin, Director, Office for Civil Rights, to the Secretary, "Equal Opportunity Goal Setting" (the memorandum is undated; however, it bears a received date stamp of Jan. 17, 1969). Other recommendations were that HEW (1) "include measures of minority group participation in our program evaluations and program workshops" and (2) "conduct a pilot review of the process by which programs are administered to determine how these processes affect program impact on minority group citizens."

turn, passed these recommendations along to agency heads in two memoranda, "The Collection and Use of Racial or Ethnic Data" and "Pilot Reviews to Determine Program Impact on Minority Group Citizens." [169]

It is too early to determine how the directive will be implemented by program administrators and, more important, how the information will be utilized once it is obtained. It is entirely possible, however, that this enterprising start at program evaluation, if carried out by HEW, could become the prototype for similar efforts throughout Government.

[169] These memoranda are undated; however, they bear a received date stamp of Jan. 18, 1969.

CHAPTER VII

COORDINATION

Many Title VI recipients receive aid from a number of Federal agencies. The same college, for example, may get assistance from HEW under the National Defense Education Act; aid from the Department of Agriculture under research programs of the Forest Service; grants from the Department of Labor in the field of manpower research; and various additional forms of assistance from other Federal agencies. Elementary and secondary schools and hospitals also are likely to receive help from more than one Federal agency at any given time. Under these circumstances a recipient could be required to submit compliance reports to each of several separate Federal agencies and could be subjected to a succession of compliance reviews by various Government officials. To avoid burdening recipients unduly and to avoid costly duplication, plans for coordinating Federal compliance efforts were promulgated by the Department of Justice early in 1966.

Pursuant to these plans HEW was given responsibility for coordinating all Federal agency enforcement procedures under Title VI for three major areas – higher education, medical facilities, and elementary and secondary schools and school systems. In February 1966, the Department of Justice issued the first two of these plans, those dealing with higher education and medical facilities.[170] In May 1966, the coordination plan for elementary and secondary schools and school systems was issued.[171]

[170] "Coordinated Enforcement Procedures for Institutions of Higher Education Under Title VI of the Civil Rights Act of 1964" (U.S. Department of Justice, February 1966) and "Coordinated Enforcement Procedures for Medical Facilities Under Title VI of the Civil Rights Act of 1964" (U.S. Department of Justice, February 1966).

[171] "Coordinated Enforcement Procedures for Elementary and Secondary Schools and School Systems Under Title VI of the Civil Rights Act of 1964" (U.S. Department of Justice, May 1966).

The three coordination plans are similar. Each contains a "statement of need" under which a number of requirements for Title VI enforcement are listed. The coordination plans all require that the following steps be taken:

1. A master list of recipients compiled;
2. A standard compliance report prepared, distributed, received and evaluated by HEW;
3. An Interagency Report published regularly, listing recipients believed to be in noncompliance;
4. Agencies are required to check the Interagency Report to identify their own recipients and applicants for purposes of possible deferred action on applications for assistance;
5. All agencies participating in the plan are required to assign to HEW responsibility for acting on their behalf with respect to investigations, compliance reviews, and informal proceedings;
6. The HEW Data Center is to provide current information concerning the status of any recipient upon request from participating agencies;[172]
7. A section on formal enforcement proceedings requires HEW to notify all agencies if a recipient is in noncompliance with Title VI and efforts to secure voluntary compliance have failed. At such time, the concerned agencies are to decide on appropriate action and are expected to rely on the Attorney General's Guidelines in arriving at their decision. The coordination plans make it clear that "assignment of responsibilities to HEW does *not* include the decision on whether or not to commence formal enforcement proceedings in behalf of any other agency."

The Higher Education and Medical Facilities coordination plans, unlike the Elementary and Secondary School plan, also contain the following provision:

8. *Costs*
   Participating agencies will be assessed for a reasonable pro rata share of the costs of maintaining the Data Center and other implementation activities based upon the amount of Federal financial assistance extended to institutions of higher education.

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[172] The Data Center originally was located at National Institutes of Health. Currently, this function is served by the Coordinator, Interagency Report, OCR.

Despite the provision for cost sharing, HEW never has received, nor seriously sought, reimbursement for any of its activities under the coordination plans.

Along with each coordination plan, the Department of Justice developed a model letter to be sent from the head of each agency participating in the plan to the Secretary of HEW transmitting assignment of responsibilities for "specified Title VI actions." The transmittal letter stipulates that the assignor "retains the right to exercise these responsibilities itself in special cases with the agreement of the appropriate official in your [assignor's] Department."

Although there was some wrangling over mechanical, technical, and jurisdictional details in the coordination plans—particularly with reference to enforcement proceedings—during the months immediately following their promulgation, they now are so taken for granted that some HEW officials had to be specifically reminded of their existence when questions concerning coordination were asked during the survey interviews. None of the HEW officials interviewed indicated that the coordination plans presented any problems. However, from the standpoint of overall Title VI enforcement activities at the Federal level, the lack of involvement in compliance activities by other agencies, which have subscribed to these plans, is a matter of concern. In practice, many participating agencies have totally abandoned their own Title VI compliance efforts in the fields of health and education, including even the minimal activity of advising HEW which hospitals, health facilities, schools, colleges, or universities they would like reviewed.

After 3 years of operation, there is a need for the Department of Justice, the Bureau of the Budget, HEW, and other interested agencies to evaluate the coordinated enforcement procedures with a view toward assessing where they have served well, where they have proved inefficient, where improvements can be made within the existing coordination structure, and where new arrangements are required.[173]

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[173] See letter of Oct. 4, 1968, from William Seabron, Assistant to the Secretary of Agriculture, to Ruby Martin concerning U.S. Department of Agriculture-HEW Coordination in Medical Facilities. Seabron stated, in part, that there appeared to be a "gap" in the USDA-HEW coordination plan for medical facilities. He referred to an exchange of correspondence which indicated that HEW would not take action unless the institution in question received either direct HEW assistance or served as a vendor of indirect HEW aid. Seabron went on to question HEW's method of operation which involves working through the State agency to achieve compliance in vendor institutions. Seabron said, "I do not see how this Department can delegate its compliance responsibility to HEW if that Department, in turn, delegates the responsibility to a State agency. And, of course, the assignment [a reference to the transmittal letter pursuant to the coordination plan] does not authorize such a delegation to a State agency."

A redistribution of compliance functions, which are now borne by HEW under the coordination plans, probably would help dissipate some of the anti-civil rights pressures which have been focused almost exclusively on HEW. Also, to the extent that HEW has begun to place increasing reliance on State agencies to monitor their own programs, the time has come for Federal agencies, which have assigned responsibilities to HEW under coordination plans, to reevaluate their own role and responsibility for effective implementation of Title VI.

SUMMARY OF FINDINGS AND CONCLUSIONS

The tenor of compliance activities at the Federal level from 1964 to the present has been set by HEW. It is the largest Federal Department in total amount of financial assistance administered by its operating agencies and in terms of the impact which its many educational, health, and welfare programs have on the lives of most Americans. HEW also has more full-time staff assigned to Title VI activities than all other Federal agencies combined. Its civil rights program, for the most part, has been given considerable support by its top administrators. During Secretary John W. Gardner's tenure, his commitment to equal opportunity and his support of the Office for Civil Rights were major factors contributing to the progress that was made. He gave F. Peter Libassi, his Special Assistant for Civil Rights, wide discretion to design and implement an effective program. Staff which was marshalled during the Gardner-Libassi period generally was of high caliber and dedicated to equal opportunity goals. In short, HEW has had the most effective Title VI operation of any Government agency.

Nevertheless, over the years, its compliance program has been uneven and has been marked by gaps and shortcomings. The extent to which HEW has been unable to fulfill its Title VI responsibilities is in large part a measure of the failure of the entire Federal effort. It is also a reflection of the complexity of Title VI enforcement and the intransigence of opposition to the letter and spirit of the law.

The following is a summary of the Commission's major findings concerning HEW's enforcement mechanism:

Structure and Organization

The rapidity with which organizational changes and shifts of key personnel within OCR have taken place renders attempts to evaluate the relative merits of various structural arrangements nearly impossible. Several clear impressions have emerged, however.

1. A centralized compliance program highly situated within the Department appears at least as effective as separate

Title VI units working out of the operating agencies. Uniform policies and procedures, better coordination, and ability to mobilize and direct staff resources are definite advantages of the present organization. However, this may be a function more of the elevation of OCR—its authority to speak and act for the Secretary—than of the centralization of staff *per se*. The removal of compliance personnel from the operating agencies, thereby reducing their potential for impact on programs and on administrators and lessening the opportunity for feedback from the programs to compliance staff, appears to be more of a theoretical than an actual disadvantage. There is little evidence that civil rights staff, functioning as such, ever played a significant role in instilling equal opportunity concepts and objectives into their respective agencies.

2. The establishment of regional civil rights offices, which was still in process when this survey was conducted, appeared to have particular value in bringing compliance staff closer to the field of operations, thereby facilitating onsite review activities. Anticipated problems of coordination and communication with the Washington office had not materialized.

Staffing

Although OCR currently has nearly 300 persons assigned to Title VI activities in the Washington and regional offices, HEW is grossly understaffed in relation to the scope and complexity of its Title VI obligations. More than any single factor, lack of sufficient staff has seriously limited compliance efforts and has frustrated potential programs.

For example, in December 1967 Congress required that school desegregation efforts in the North and West equal those in the South—an effort which presumably would require a large increase in staff merely to maintain the previous level of activity. Congress, however, authorized only a relative handful of additional positions for OCR. HEW had no alternative but to stretch its limited staff resources even further to carry out the directive of Congress.

Moreover, this lack of staff has brought into play a sort of converse Parkinson Law. To the extent essential staff has been unavailable, HEW has had to rank its Title VI compliance

responsibilities in terms of priorities and some simply have been ignored. In turn, the need for vastly increased staff resources tends no longer to be perceived as crucial. In short, the agency, forced to accept the reality of inadequate staff, grows accustomed to it. Most of the deficiencies summarized below can be correlated almost directly with insufficient staff.

Field Reviews

The scope of field reviews often has been too limited and the frequency of reviews has been insufficient. Major inadequacies in this aspect of the Title VI compliance program are noted below:

Education—In this most crucial area progress remains painfully slow. Although strides made since passage of the Civil Rights Act of 1964 have been significant—especially when compared to the previous 10 years following the *Brown* decision—and although increasing momentum has been developed over the past year or two (1967 to 1968 marked the greatest 1-year increase in the number of Southern Negro children in desegregated schools), almost 80 percent of all Negro children in the 11 States of the Deep South still attended segregated schools as the 1968-69 school year got underway. Moreover, this does not describe the full picture. Discriminatory practices exist within many school districts and individual schools in systems which are considered to be in compliance. The lack of adequate staff in large part has been responsible for HEW's inability to discover and remedy discrimination within schools that appear outwardly desegregated and to conduct follow-up field reviews to determine whether schools considered to be "in compliance" actually are abiding by the law.

Higher Education—Until 1968, HEW did not have a significant compliance review program for colleges and other institutions of higher education. Even today, less than a dozen full-time staff members are trying to monitor compliance with Title VI for more than 2,500 colleges and universities throughout the country. Reviews which have been conducted to date have tended to view discrimination primarily in terms of numbers of students by race in attendance. Problems which have existed in the past and which may persist in varying degrees at different colleges—such as discrimination in athletic programs, social activities, and housing—have received little scrutiny. There is no stated policy on such matters as recruitment and assignment of minority group professional staff at colleges and

universities. As of this writing, there is no program of review of the policies and practices of graduate schools throughout the country.

Health—Since the concerted and relatively successful compliance effort in 1966 in conjunction with certification for Medicare, there has been no routine review of medical facilities throughout the country. Most extended care facilities, nursing homes, and other 24-hour facilities have never been subject to field reviews. Staffing practices and policies in medical facilities and nursing homes largely have been neglected. As of this writing, HEW has developed no clear policy with respect to employment practices at extended care facilities and nursing homes. HEW also has failed to come to grips with the problem of many doctors throughout the country who refer Negro patients to predominantly Negro hospitals and white patients to predominantly white hospitals. Similarly, it has been unable to eliminate referrals by State agencies and other recipients of Federal funds to members of the medical profession who maintain segregated practices.

Welfare—Prior to 1968, the number of State agency reviews of public assistance, child welfare, and vocational rehabilitation programs could be counted on the fingers of one hand. In the spring of 1968, HEW inaugurated a systematic review of State administered continuing programs designed to fill this gap (and also meet HEW's compliance responsibilities in the health field and in other continuing State programs). However, as 1969 began, two of every three States still had never been subject to a compliance review by Federal Title VI enforcement officers. Moreover, the limited manpower available has permitted reviews of only a sampling of recipients in selected geographic areas. This limitation has sharply reduced the potential effectiveness of this ambitious program. In addition, the heavy reliance on State agency personnel and the trend toward relinquishing major compliance responsibilities to the States pose serious threats to the Title VI enforcement effort and in some instances may constitute a breach of HEW's responsibility under the coordination plans.

Paper Compliance

Reliance on paper compliance which characterized the Title VI enforcement effort several years ago is still much too prevalent. Many primary recipients of Federal assistance never

have been reviewed and most vendors of service to State agencies also have escaped review.

Compliance Reports

HEW has required a variety of reports from its recipients, particularly in the areas of health facilities and schools and colleges. However, reports currently in use fail to elicit data which could help to provide a more detailed picture of the extent of recipient compliance, or lack thereof. Moreover, OCR has never developed the data analysis capacity which would enable it to make maximum use of information and compliance reports which are currently available. HEW has yet to develop a format for evaluating programs in terms of their impact on nonwhites and in terms of their availability and utilization by minority groups.

Complaints

Despite HEW's regulations which call for a "prompt investigation" of complaints or other information indicating a possible failure to comply, HEW increasingly has relegated complaint investigations to low priority status. Currently, complaint investigations are deferred until they can be taken up in the course of a routinely scheduled school review or State agency review. Often they are turned over to program officials or State agency personnel and, in some instances, they appear to get lost altogether. Again, limited staff has dictated priorities. It is unfortunate that the downgrading of complaint investigation responsibilities is one of the costs which HEW must pay for improvement in other aspects of its compliance operation. The solution lies in sufficient staff to enable HEW to carry out all its responsibilities effectively, not to reduce the effort to develop and maintain a comprehensive compliance review program.

Coordination Plans

No effort has been made by HEW or the Department of Justice to review and reevaluate the operation of the three coordination plans for which HEW has been assigned primary responsibility. Most Federal agencies which come under the coordination umbrella have almost totally turned over their Title VI responsibilities to HEW. For the most part, these agencies have made no effort to share the burden of costs, manpower, or Congres-

sional ire which are the concomitants of a vigorous Title VI compliance program.

Training

A unique aspect of HEW's civil rights program has been the training unit within OCR. The unit helped fill the need for rapid orientation and training of new staff which the 1966–67 influx of personnel and large scale field review operations required. It has attempted to develop innovations in training and has provided a partial link between OCR and the operating agencies. With training responsibilities increasingly shifting to the regional offices, with the leveling off of staff size and field activity, and a lessened sense of urgency about the need for training, there are indications that the unit will be relegated to a minor role—perhaps disbanded altogether—as more pressing priorities are asserted.

Administrative Leadership

In general, HEW's top administrators have furnished good support for their Department's civil rights activities and, on occasion, have exercised creative leadership in the use of program options to further broad equal opportunity objectives. Recognition of the integral relationship between program administration and equal opportunity was displayed in a legacy of the previous administration. Before leaving office Secretary Cohen recommended that the operating agencies undertake pilot projects of racial data collection and program evaluation, with a view toward assessing utilization of services and facilities by minority groups, differentials in service, and success or failure in attaining program goals with respect to minority group participants.

After the last vestiges of gross discriminatory practices—dual school systems, segregated facilities, and exclusionary admission policies—have been abolished, the struggle for equal opportunity under Title VI ultimately will turn on the manner in which Federal programs are delivered and the extent to which they are utilized at the local level. In this respect the role played by top agency administrators and program managers will be decisive.

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